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REPORT OF THE ASSOCIATION

AMERICAN HISTORICAL ASSOCIATION

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AMERICAN HISTORICAL ASSOCIATION

Organized at Saratoga, N. Y., September 22, 1884.

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CONSTITUTION.

I.—The name of this Society shall be THE AMERICAN HISTORICAL ASSOCIATION.

II.—Its object shall be the promotion of historical studies.

III.—Any person approved by the Executive Council may become a member by paying three dollars; and after the first year may continue a member by paying an annual fee of three dollars. On payment of fifty dollars, any person may become a life-member exempt from fees. Persons not residents in the United States may be elected as honorary members, and shall be exempt from the payment of fees.

IV.—The officers shall be a President, two Vice-Presidents, a Secretary, a Treasurer, and an Executive Council consisting of the foregoing officers and of four other members elected by the Association, with the Ex-President of the Association. These officers, except the Ex-President, shall be elected by ballot at each regular annual meeting of the Association.

V.—The Executive Council shall have charge of the general interests of the Association, including the election of members, the calling of meetings, the publication of papers to be read, and the determination of what papers shall be published.

VI.—This Constitution may be amended at any annual

AMERICAN HISTORICAL ASSOCIATION.

SECRETARY'S REPORT

OF THE

PROCEEDINGS AT THE FIFTH ANNUAL MEETING,

WASHINGTON, D. C., DECEMBER 26-28, 1888.

DURING the Christmas holidays the American Historical Association held its fifth annual reunion. The Federal City was the place chosen for the Convention. The attendance was the largest in the five years' history of the Association, for the number considerably exceeded that registered in Boston and Cambridge in the month of May, 1887, when both the Historical and Economic Associations assembled at the same head-quarters. Experience has demonstrated that these two organized bodies are now so large and so well-supported that they can no longer profitably convene at the same time and in the same city. Each is strong enough to go alone. On the very days when the Historical Association met in Washington the Economic Association was holding highly successful meetings in Philadelphia.

Among the members of the American Historical Association present at the Washington meeting were the Hon. George F. Hoar, Senator from Massachusetts, and James Phelan, member of the House of Representatives from Tennessee, and author of the new history of that State. These gentlemen are deserving of special honor by the Associa-

tion for their efficient service in securing the passage through Congress of the charter of the Association. Other members of Congress and many persons connected with departments of the General Government were present at various meetings of the Association. Numerous members resident in Washington were in attendance, notably the Hon. J. C. Bancroft Davis, who took part in one of the discussions; Hon Horatio King, John D. King, William C. Rives, Rear-Admiral Jenkins, General R. D. Mussey, Capt. George M. Wheeler; Dr. J. M. Toner, of the Congressional Library; Dr. George B. Loring, who discussed one of the papers; Dr. G. Brown Goode, Assistant Secretary of the Smithsonian Institution, to whose courtesy and coöperation the success of our meetings in the National Museum is largely due; A. Howard Clark, of the Museum; Frederic A. Bancroft, the Librarian of the State Department, who showed our visiting members polite attention. Most appreciative of the kindness of Washington librarians was a little party composed of Douglas Brymner, the distinguished archivist from Ottawa; Ernest Cruikshank, the historian of Province Ontario, who had come to Washington for a prolonged study of American records of the War of 1812; and Mr. B. Fernow, the Keeper of the Archives of the State of New York at Albany; accompanied by a select company of young professors and graduate students from the West and South. Perhaps the rarest opportunity of the entire Convention was this rummaging through the record-offices of Washington by a few men who appreciated the historical attractions of Washington. It may be remarked that our Canadian friends and associates made some important discoveries among our neglected and scattered papers; and that, from the able description of the Canadian Archives by Mr. Brymner, the Dominion Archivist, our American Historical Association learned what scientific order can be brought out of a chaos of state papers by well-directed effort with only moderate government aid.

The educational interests of the country were well represented at the Washington Convention of Historical

Specialists. Present at every meeting were officers of the Smithsonian Institution, the National Museum, and the Bureau of Education. No less than five college presidents attended the various sessions and three took part in the exercises. To President James C. Welling, of the Columbian University, the Association is under special obligation for his active coöperation and the use of the large lecture-hall of that institution during the three evening sessions. Conspicuous among university representatives by reason of seniority as well as vigorous participation in historical debate was Dr. C. J. Stillé, formerly Provost of the University of Pennsylvania, author of the recent and interesting sketch of Poinsett. President Charles Kendall Adams, of Cornell University, one of the original founders of the Association, was at the Washington meeting elected President for the ensuing year. Among men of like academic distinction were Dr. Merrill Edward Gates, President of Rutgers College, and Lyon G. Tyler, the new President of William and Mary College, now happily revived by the State of Virginia.

There were college professors from New England, New York, the West, and the South. Justin Winsor and John H. Gray, the successor of Mr. Laughlin, represented Harvard University; Dr. J. F. Jameson, the successor of Professor Andrews, came from Brown University, and Professor Ferguson, from Trinity College, Hartford. Among the representatives of New York institutions were Professor Lucy M. Salmon, of Vassar College; Professor W. M. Postlesthwaite, of West Point Military Academy; Dr. Henry M. Baird, of the University of the City of New York; Dr. Philip Schaff, the successor of Dr. Roswell D. Hitchcock, of Union Theological Seminary, and the founder of the new Society of Church History, which met in Washington at the same time as did the American Historical Association; Mr. Edward G. Bourne, formerly instructor at Yale University and lately appointed Professor of History in Adelbert College, Cleveland; George W. Knight, of the State University of Ohio; J. A. Woodburn, of Indiana

State University; J. D. Crawford, of the University of Illinois; Robert D. Sheppard, of the Northwestern University at Evanston; R. Hudson and A. C. McLaughlin, who together direct the historical department in the University of Michigan; Frederic J. Turner, the associate of Professor William F. Allen in the University of Wisconsin; Allen C. Thomas, of Haverford College, near Philadelphia; William Hyde Appleton and G. E. H. Weaver, two Harvard men now at Swarthmore College in Pennsylvania; James W. Garnett, of the University of Virginia; R. B. Smithey, of Randolph-Macon College; and William P. Trent, formerly of the Johns Hopkins, now Professor of History in the University of the South.

The Western and Southern reach of academic representation, as shown in the above list, is not without interest to an observing reader, nor yet wholly insignificant are the following local, corporate, and State connections. The time is coming when the American Historical Association will have its delegates from State and county and town societies. From Richmond came the Hon. William Wirt Henry, now second Vice-President of the American Historical Association, together with various representatives of the New South, including Dr. A. D. Mayo, the Apostle of Education. From New York came the Hon. John Jay, President of the Huguenot Society of America and now first Vice-President of the Association. New York was further represented by the Hon. Charles A. Peabody, Gen. James Grant Wilson, C. W. Bowen, William E. D. Stokes, Samuel M. Jackson, E. W. Fisher; C. H. C. Howard, of the Astor Library; Dr. M. M. Bagg, of the Oneida Historical Society at Utica; and Willard C. Fisher, Fellow of Cornell University. From Boston came James Schouler, the distinguished historian; from old Braintree, the Headmaster of Thayer Academy, J. B. Sewall. Providence and the Rhode Island Historical Society were represented not only by Professor Jameson, but also by William E. Foster, of the Providence Public Library. From Worcester came Nathaniel Paine, a member of the American Antiquarian

Society. Guilford, Conn., had a voluntary delegate in the Rev. Dr. William M. Andrews, and Berkeley Divinity School had a representative in Charles N. Morris, a graduate of Yale. From Philadelphia came Dr. Stillé and Henry Phillips, Jr., Secretary of the American Philosophical Society. From Baltimore came Henry Stockbridge, member of the Maryland Historical Society, and various graduate students from the Johns Hopkins University. Turning again westward, we meet Dr. E. M. Avery and James F. Rhodes, both of Cleveland; Dr. W. F. Poole and Daniel Goodwin, both of Chicago.

The Convention opened Wednesday evening, December 26th, at eight o'clock, in the large and attractive lecture-room of the Columbian University, corner of H and Fifteenth Streets. Dr. William F. Poole, director of the new and richly endowed Newberry Library, of Chicago, who has made various important contributions to the history of the Northwest, was chosen President of the Association at the close of the Boston meeting, in view of the coming centenary of the settlement of the region beyond the Ohio. Although the place of meeting was afterward changed from Columbus to Washington, a good place in the programme was reserved for papers relating to the Northwest. Dr. Poole's inaugural address was naturally devoted to the historical interests of that section of country. He made his large and appreciative audience realize that the history of the United States is not confined to the Atlantic seaboard; that there is an ever-expanding horizon of interest in the institutional, economic, and social history of the great West. He reviewed many of the critical questions concerning the original discovery and settlement of that country, now the basis of our republican empire. Most interesting was his able reconsideration of the long-vexed question of the origin of the famous Ordinance of 1787 for the government of the Northwest Territory. It was shown that not one man but many men, not one set of circumstances but a combination of Northern and Southern interests worked together for that grand political result called the Ordinance

of 1787. Without withdrawing from his earlier position regarding the personal influence of Dr. Cutler in illuminating the Bill with noble provisions for education and free soil, and in securing its passage by Congress, Dr. Poole reviewed the whole question in a truly national spirit, worthy of the Association over which he presided. Following the inaugural address were two short communications regarding certain noteworthy historical works now in process of publication. General James Grant Wilson spoke of the methods pursued in editing the "*Cyclopædia of American Biography*," now approaching completion. Dr. A. G. Warner briefly described a work on "*Local Constitutional History*," prepared by his colleague in the University of Nebraska, Professor George E. Howard, an historical pioneer in the far Northwest. The existence of a flourishing school of history and politics in that far-off region, as well as in every one of the States of the old Northwest Territory, is an accomplished fact.

Thursday was a field-day for Northwestern history. The Association met at 10.30 A.M. in the spacious lecture-room of the National Museum, to which the Association had been invited by the Regents of the Smithsonian Institution. The first paper of the morning session was by A. C. McLaughlin, Assistant Professor in the University of Michigan, upon "*The Influence of Governor Cass upon the Development of the Northwest*." It is understood that the historical importance of this subject was suggested by Judge Cooley, of Ann Arbor. Lewis Cass, the Governor of Michigan Territory, for a long period had under his control the Indian posts of the Northwest, and he may be said to have shaped the Indian policy of the United States Government. Professor McLaughlin showed, in a clear and suggestive manner, the masterly diplomacy of Cass in his dealings with the British Government, our great rival for colonial influence in the ever-expanding Northwest Territory. The paper was ably discussed by President C. K. Adams, formerly Professor of History in the University of Michigan. In the original work of its still flourishing and

still growing historical department he evidently took the liveliest interest, as did the whole audience; for Mr. McLaughlin had an interesting subject and a well-written paper, which he read in an agreeable manner. In fact, all the communications made at this Thursday morning session were remarkable well presented, an unusual phenomenon in scientific conventions or learned bodies. There was only one other session which at all rivalled the one under consideration, and that was on Friday evening, the last and most successful session from a public point of view.

The second paper, Thursday morning, was by Professor William F. Allen, of the University of Wisconsin, and it was read by his former pupil and historical associate, Frederick J. Turner. The subject was "The Place of the Northwest in General History." Professor Allen pictured the European background in the great historic drama called "The Westward March of Empire." He called attention to the fact that, three hundred years ago, Spain had a strong grip upon North America. Twenty years later France and England were planting rival colonies. The defeat of the French power in Canada relieved English colonies from Northern pressure, and prepared the way for the American Revolution. The paper further showed that the imperial destiny of the United States hung upon the possession of the Northwest. But for the military success of George Rogers Clark and the diplomatic skill of the American commissioners in successfully negotiating for this very territory, American nationality would have had no free scope; the Mississippi Valley would, perhaps, never have been rescued; the Louisiana Purchase would possibly never have been made. The first territorial advance gave confidence and courage for that march across the continent which really constitutes America. The development of our national policy is inseparably connected with the Ordinance of 1787 for organizing and governing the Northwest Territory. Our entire territorial system, our national idea of republican expansion in free, self-governing States, our national guaranties of free soil, civil and religious liberty,

and the education of the people, are all the historical outgrowth of the *Magna Charta* of the great Northwest.

The next paper was upon the subject of "The History of Higher Education in the Northwest." It was prepared and read by Professor George W. Knight, a graduate of the historical school founded by Andrew D. White and C. K. Adams, in the University of Michigan. Dr. Knight is now professor in the Ohio State University, and is the author of a valuable monograph on "The History and Management of Federal Land Grants for Education in the Northwest Territory," published in the first volume of the "Papers of the American Historical Association." Upon the basis of this original work Dr. Knight is now constructing a "History of Higher Education in the States of Ohio, Illinois, and Michigan," a work which will ultimately be published by the United States Bureau of Education. His brief contribution showed that the Congressional policy of aiding higher education began historically in the Northwest Territory. Although it was not the original intention of Congress to found State universities, such institutions are the natural outgrowth of State aid, which must concentrate or dissipate its energies. In the educational history of the West, the fittest ideas will survive. The Universities of Michigan and Wisconsin are leading the way to the highest education in the Northwest.

Thursday morning's session closed with an interesting talk from Major J. W. Powell, Director of the United States Geological Survey, and the practical leader in recent organized inquiries, under government authority, concerning the languages, institutions, manners, and customs of the North American Indians. There in the great National Museum, itself a splendid monument of the work already accomplished for American history and archæology by congressional support, there in that spacious lecture-hall, surrounded by the now priceless Catlin Collection of Indian portraits, the one-armed Major eloquently discoursed upon "A Language Map of North America," representing in a pictorial way the historical results of many years of systematic study

of the native Indian tribes and nations. He said that language had at last been recognized as the best historical basis for tracing the affinities of North American Indians. There are no less than seventy-three distinct linguistic stocks, with innumerable dialectic variations. Major Powell described the remarkable character and perfection of these Indian languages from a 'grammatical point of view, and greatly amused his audience by showing that the tendency of the languages of civilized man was toward the gradual extinction of grammar. This view led him to satirize modern Volapük, an aggregation of all sorts of grammar, as a literary monstrosity, reminding one of a universal animal with all possible organs of a specialized nature, hoofs, hands, claws, wings, web-feet ridiculously jumbled together.

Thursday afternoon, from four to seven o'clock, by the kind invitation of Mr. and Mrs. Horatio King, members of the Association and the ladies accompanying them attended a "tea," given in their honor at No. 707 H Street. Many of the scientific people of Washington and a few other representatives of Washington society were present to meet the Association. The occasion proved highly enjoyable to our visiting guests, thanks to the courtesy of Mr. and Mrs. King and the friendly disposition of Washington people.

The evening session on Thursday was called to order promptly at eight o'clock by President Poole, in the lecture-hall of the Columbian University. The first paper of the evening was by Professor J. F. Jameson, of Brown University. His subject was, "The Old Federal Court of Appeal." He said it was well to remember that the United States had a federal judiciary before 1789, although with narrow scope. The Old Federal Court was formed to hear appeals from State courts in prize cases. George Washington made the first suggestion of a federal prize court. From 1776 to 1780 Congress heard prize appeals by means of committees. Their adherence to this plan was attributed by the speaker partly to the influence of the English plan familiar to the colonists, by which prize appeals were heard by a committee of the privy council.

The complications arising out of the case of the sloop "Active," which embroiled the Federal Government with Pennsylvania, and showed the weakness of the former, led to the establishment of a permanent Court of Appeals in Cases of Capture. Its organization and procedure were described by Professor Jameson. Its last meeting occurred in May, 1787. One hundred and eighteen cases came before the court and the committee which had preceded it. It no doubt had an educative influence in bringing the people of the United States to consent to the establishment of a powerful federal judiciary. It may therefore justly be regarded as having been not simply the predecessor, but one of the origins of the Supreme Court of the United States. Professor Jameson's valuable paper was briefly discussed by the Hon. J. C. Bancroft Davis, who has lately published a short monograph upon the same subject, although treating it in a somewhat different way. Each of these scholars had approached his theme without any knowledge of the other's work, and each spoke in the most appreciative language of the other's service to historical science. The two papers are alike contributions to an important but hitherto obscure subject.

The next paper was one of the most suggestive of all those that were presented at the Washington meeting. It was upon the subject of "The Canadian Archives," and was read by the Dominion Archivist, Mr. Douglas Brymner, of Ottawa, the practical significance of whose work has been already mentioned in another connection. Mr. Brymner said there was no systematic arrangement of Canadian Archives before the year 1872, when a petition was presented to the three branches of Parliament praying that steps should be taken for the collection of materials relating to the history of the country. The duty of accomplishing the objects of the petition was assigned to the Minister of Agriculture, who is also Minister of Arts and Statistics. Mr. Brymner was appointed to organize the work. In June, 1872, he was furnished with three empty rooms and "very vague instructions." Mr. Brymner then proceeded

to a preliminary examination of the military correspondence preserved at Halifax, and the historical materials to be found in the capitals of the various provinces. In 1873 he went to London and visited the various government offices, the British Museum, and every place where Canadian documents could possibly be discovered. In the British Museum he found the now famous Haldimand Collection and the Bouquet Collection. General Haldimand was Governor of Canada during the American Revolutionary War, and the collection which bears his name relates to the events connected with his official career. The other collection relates to the military operations of Bouquet. The information contained in the Haldimand Collection covers an immense extent of territory. The mass of correspondence fills no less than 232 volumes. Before leaving London, Mr. Brymner made arrangements for copying all the documents contained in the two collections. He persuaded the authorities at the War Office to permit the transfer of the military correspondence from Halifax to Ottawa. No less than eight tons of documents were thus rescued, for it was the intention of the British Government soon to ship the whole mass to England. Mr. Brymner described the tremendous task of classifying and arranging all these hitherto scattered papers, which have been found to number no less than 400,000 titles. He adopted, as did Jared Sparks in all his documentary collections, a strictly chronological order. Knowing that the work of indexing must proceed slowly, he grouped his materials by great subjects. After proper classification and arrangement, the documents were bound. Of the details of Mr. Brymner's work in matters of indexing, calendaring, etc., it is not possible to speak in this connection. Suffice it to say that he set before the American Historical Association and the archivists of Washington a high standard of official duty and a high ideal for his own future work. He said in conclusion: "My ambition aims at the establishment of a great storehouse of the history of the Colonies and Colonists in their political, ecclesiastical, industrial, domestic, in a word, in every aspect of their lives as communities."

The concluding paper of the Thursday evening session was by President James C. Welling, of Columbian University, upon "The States'-Rights Conflict over the Public Lands." He showed that this conflict began in colonial and revolutionary times, and that it imperilled the formation and ratification of the Constitution. Instead of being settled by the Federal Convention in 1787, the conflict was simply handed on from the undefined jurisdiction of the old Continental Congress to the ill-defined jurisdiction of the federal Constitution. The struggle has perpetually re-emerged in the history of the United States down to the time of our late Civil War. The conflict has always been between two classes of States for the possession of public land as the pledge and symbol of political preponderance in the administration of the Federal Government.

The last morning session of the Association was held at the National Museum. The first communication was a valuable essay in American economic history, upon our "Trade Relations before the Year 1789," by Willard Clark Fisher, Fellow in Cornell University. While not intended as a practical solution to the present tariff question, the paper clearly showed that our national tariff system is deeply rooted in American colonial history. Mr. Fisher reviewed the commercial regulations of the different colonial governments, and showed that the first important step towards a continental system of duties was taken in the import resolutions of 1781 and 1783. Mr. Charles N. Morris, a Yale graduate now in the Berkeley Divinity School, then presented a "History of Internal Improvements in Ohio," with an interesting diagram showing the economic effects of the policy. He showed the influence of the Erie Canal in stimulating the State policies of internal improvements in Maryland, Pennsylvania, Ohio, and other States further to the westward. The public works of Ohio, notably the canals, were failures from a business point of view. The profits arising were insufficient to pay the interest on the debt incurred. Ohio public works stimulated speculative enterprises and the reckless

construction of turnpikes and railroads. The so-called "loan law" of 1837, by which the State lent credit to private companies upon very loose principles, led to a plundering of the public treasury and to many economic disasters.

The principal paper of this session and one of the most important, from a public point of view, in the entire convention, was on "The Uses and Limitations of Historical Museums," by Dr. G. Brown Goode, Assistant Secretary of the Smithsonian Museum and for a long time practical director of the National Museum. The lecture-hall, which on the first day of the convention was beautifully decorated with framed engravings and etchings (just received from the Exposition at Cincinnati and tastefully arranged in alcoves along the sides of the room), now presented additional attractions to the delighted gaze of members of the Historical Association as they entered and looked about. Many of the upright cases containing American historical relics had been brought into the lecture-hall, and a large collection of historical portraits, grouped in swinging frames around upright shafts, greeted the eye as the audience looked toward the platform and the speaker's place. It seemed as though civilized man was at last finding an honored place in that vast company of savage portraits and Indian relics, which, in the popular fancy at least, have long characterized the National Museum. Before seeing this new historic vista very few among the visiting members in the American Historical Association had any adequate conception of the rapid progress which this same museum has of late years been making in the direction of what might be called historical in contradistinction from prehistoric and purely archæological collections. The idea of the historic evolution of the arts and sciences, the thought of a National Portrait Gallery, arranged by States, is clearly in process of development. Catlin's collection of Indian Portraits will some day have a rival which every visiting citizen and foreign traveller will study with enthusiasm. Prehistoric art in that great Museum has led the way already to historic art. Civilization will soon be illustrated as fully as savagery.

This prelude formed no part of Dr. Goode's paper, but ideas of this sort were in many people's minds, as revealed in subsequent conversations. Dr. Goode said that the historian and naturalist have met upon common ground in the field of anthropology. The anthropologist is in most cases historian as well as naturalist, while the historian of to-day is always in some degree an anthropologist, and makes use of many of the methods of natural science. The museum is no less essential to the study of anthropology than to that of natural history. The library formerly afforded to the historian all necessary opportunities for work. The charter of the American Historical Association indicates that a museum is regarded as one of its legitimate agencies. The museum idea is much broader than it was fifty or even twenty-five years ago. The museum of to-day is no longer a chance assemblage of curiosities, but rather of objects selected with reference to their value to investigators, or their possibilities for public enlightenment. The museum of the future may be made one of the chief agencies of the higher civilization. One source of weakness in all museums is that they have resigned, without a struggle, to the library materials invaluable for the completion of their exhibition-series. Pictures are just as available for museum work as specimens, and it is unwise to allow so many finely illustrated books to be lost to sight and memory on the shelves of the library. Dr. Goode defined a museum as a carefully selected series of labels, each illustrated by a specimen. He thinks the object of a museum is largely educational. By using books, pictures, casts, maps, personal relics for illustrative purposes, the friends of history in America can greatly stimulate popular interest in the development of human culture and modern civilization. In such ways the National Museum is already beginning to illustrate the origin and growth of the arts, for example, music, the highest of all arts. There is a long historic process in the development of every human implement and useful invention. Professor Mason has illustrated some of these processes in the arrangement of collections in

the Museum. The history of the ways and means of transportation, simple as the idea now seems, covers the entire range of man's economic development, from the rude devices of the savage to the modern application of steam and electricity by civilized man. As a practical means of quickening popular interest in the historical side of the National Museum, it was suggested that a National Portrait Gallery be developed in Washington with pictures of early discoverers, colonial founders, pioneers, governors, statesmen, public men grouped when possible by States. Such collections might easily be made by appealing to State pride, to State Historical Societies, local antiquaries, and local members of the American Historical Association. The collection of historical archives, family papers, valuable letters, and historical autographs might also be fostered by the same means. The Secretary of the Smithsonian Institution is one of a committee of three appointed by Congress to form what may perhaps be called a Record Commission, or a Commission on Historical Manuscripts already owned by the government.

The closing session was called to order at 8 P.M. in the Columbian University. In the absence of Mr. Henry C. Lea, of Philadelphia, his paper upon "The Martyrdom of San Pedro Arbués" was read by General Wilson. Mr. Lea's paper, which will be printed in full in the proceedings of the Association, was an important contribution to the history of the Inquisition in Spain. In Castile the breaking down of national institutions enabled Ferdinand and Isabella to introduce the Inquisition without opposition, but in Aragon the case was different, and the attempt was delayed until the consent of the Cortes, or Parliament, could be had. This was accomplished in the spring of 1484; Pedro Arbués and Gaspar Juglar were appointed inquisitors, and two *autos-de-fé* were held in May and June. Gaspar Juglar was speedily poisoned, and a strong popular antagonism suspended the proceedings of Arbués. Efforts were vainly made to induce King Ferdinand to change his purpose and all the resources of legal opposition were exhausted. Supported by the

royal power Arbués resumed his functions, and a conspiracy was formed among the *conversos* (Jews baptized through force or fear) to despatch him. In April or May, 1485, an attempt was unsuccessfully made upon his life, and it was not until September 16th that the conspirators wounded him mortally while kneeling in prayer at matins before the altar of the cathedral. The assassination caused an immediate revulsion of popular feeling which enabled Ferdinand to establish firmly the Inquisition in Aragon.

The second paper of the evening was by the Hon. William Wirt Henry, of Richmond, and was entitled "A Reply to Dr. Stillé upon Religious Liberty in Virginia." In the paper he had read before the Association in 1886, Mr. Henry had maintained that Virginia was the first State in the history of the world to embrace in her constitution of government the principle of absolute religious liberty, involving the absolute divorce of church and state. Dr. Stillé in a paper read in 1887 contested this point, on the ground that the Virginia Bill of Rights, in which the principle was embodied, was no part of the Virginia constitution and needed subsequent legislation to enforce it, which was not till 1785, when Jefferson's bill to establish religious liberty was enacted; and further that Pennsylvania before that time had adopted a constitution in which the principle had been more clearly stated. Mr. Henry in replying to Dr. Stillé cited the decisions of the Virginia Court of Appeals to the effect that the Bill of Rights was a part of the constitution, was in force without legislation, and rendered null and void all conflicting acts. He cited also an act of the Virginia Assembly to the same effect, which embodied the statement that Jefferson's bill was but a true exposition of the Bill of Rights. Mr. Henry declared that the Virginia principle, thus implanted in her Bill of Rights, guaranteed civil rights to men of all religious beliefs, to Christians, Jews, pagans, infidels, and atheists; and was a complete divorce of church and state. He then cited the provisions of the Pennsylvania constitutions, and showed that they denied civil rights to atheists and to men who did not believe in future rewards and punishments. He maintained

that the Virginia principle was not antagonistic to Christianity, but was one of the truths taught by its author, and that Christianity, like all truth, has the power of self-preservation, and only asks of civil government to be let alone. Mr. Henry's paper was vigorously discussed by Dr. Stillé, Senator Hoar, and President Poole.

The last paper of the evening was by Clarence W. Bowen, Ph.D., upon "The Inauguration of George Washington as President of the United States." The paper was published in full in *The Century*, April, 1889, at the time of the centenary celebration in New York City, and its report in the present connection is not required. Some of the committees appointed by President Poole on the opening night of the Washington meeting now reported. In behalf of the committee on time and place of next meeting, Judge Charles A. Peabody reported in favor of Washington and the Christmas or Easter holidays, at the further discretion of the committee. Professor Postlethwaite, of West Point, reported resolutions of thanks on the part of the Association to the officers of the Smithsonian Institution and National Museum, to the President and Trustees of the Columbian University, to the President and Board of Governors of the Cosmos Club, and to Mr. and Mrs. Horatio King, for their various courtesies to the Association during its Washington convention. The treasurer's report for the current year shows the present assets of the Association, in good investments and ready money, to be \$3,468.32, not counting the market value of the Association's published "Papers," of which there is a good stock in the Publishers' hands. In behalf of the committee on nominations, Mr. Justin Winsor reported for President of the Association, Dr. Charles Kendall Adams; for First Vice-President, the Hon. John Jay; for Second Vice-President, the Hon. William Wirt Henry; the remaining officers to be continued, with the addition of Professor George P. Fisher to the Executive Council. Into this Historical Areopagus Dr. Poole will now honorably retire as ex-Presidents White, Bancroft, and Winsor have done before him.

In behalf of the committee on the Charter, Mr. Winsor reported the final passage of a satisfactory act of incorporation for the American Historical Association by both Houses of Congress, and the favorable prospect of the signing of the bill by the President immediately after the congressional recess. Mr. Phelan, of Tennessee, who had at last succeeded in getting the act through the House, was then called for and made a facetious speech, recommending the Rules of the House of Representatives as a good subject for original research. Senator Hoar, who closed the Washington meeting in 1886 with a brilliant tribute to Mr. George Bancroft, the retiring President, was now called upon for a speech. He congratulated the Association upon its alliance with the Smithsonian Institution. He said Washington was destined to become the centre of intellectual activity in this country. The great scientific bodies of the United States had already established their headquarters there. It was only natural that the American Historical Association should make Washington the seat of its activity. The future would show that the historian of American institutions must come to Washington, for here are the great collections of the State Department, the Congressional Library, the National Museum, and the vast unexplored treasures of the various Departments of the United States Government. The value of the vast historical treasure-house in this city will increase from year to year, so that, in time, the great American University, in the widest acceptation of that term, will be in the City of Washington. Millions of dollars invested in educational institutions elsewhere will not bring about the same results as a moderate sum invested in Washington.

Senator Hoar further said that American history is the most stimulating history that the world has known. If we are to maintain the republic, a knowledge of its history is absolutely essential to its good government. The importance of teaching the history of the United States to young men cannot be exaggerated. Our young men must be taught that virtue is possible in public men and that it is also possible in nations.



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- N. B.—Corrections in the above list should be sent to the Secretary.

THE EARLY NORTHWEST

INAUGURAL ADDRESS

THE EARLY NORTHWEST.

By WILLIAM F. POOLE, LL.D., President of the Association.

It was the intention of the committee having the matter in charge to select, as the place of this meeting, some city in the Northwestern States, in view of the fact that this is the centennial year of the English settlement of that territory. Columbus, Ohio, was therefore chosen, and an early date in September was named. The preoccupation of Columbus at that date by centennial celebrations, army reunions, and political assemblies made it advisable to change the place of meeting to Washington, and the time to this later date. It was understood, however, that the scheme of topics originally proposed, in which, under the circumstances, the Northwest was likely to have a prominent place, would not be changed.

It is apparent to every intelligent observer that there is in our country an increasing interest in historical studies, and especially in the study of Western history. Perhaps the most marked indication of the fact is the number of young and scholarly persons who are turning their attention to the subject, and are writing monographs which are models of literary taste and of exhaustive historical research. The introduction into our leading universities of the method of studying history from original sources, and the appointment of trained and accomplished professors to superintend these studies, have done much to create and develop this awakened interest in history. At all events, the generous enlargement of the college curriculum and the production of such papers as have appeared in the "Historical and Political-Science Studies of the Johns Hop-

kins University," give emphasis to the fact that the fashion of writing American history which the public once seemed to enjoy—in which preconceived opinions, tradition, the imagination, and old text-books were served up with much rhetoric and fine writing,—has passed away.

The leading purpose of the historical student of our time is to ascertain what is the truth, and, having found it, to express it clearly, concisely, and fearlessly. Following his inquiries back to original sources, he is often amazed that so much of what has passed current as history and been copied from one writer to another, is erroneous. The best results of thorough and accurate investigation and scholarship have not yet been embodied in the general works known as "Histories of the United States." They are in special treatises, in monographs, and in the publications of historical societies and printing clubs. A "History of the United States" prepared on the principles which are taught in the historical departments of the Johns Hopkins University, of Cornell University and the University of Michigan, is the desideratum of our time. The materials for such a history are abundant and available, and the references to them in works like President Adams's "Manual of History" and Winsor's "Narrative and Critical History" will aid the student in his search for truth.

Such a history as we are considering will recognize the fact that a large and important portion of our common country lies west of the Alleghany Mountains, and that it has a varied, romantic, and entertaining record of its own, quite unlike that of the Eastern States. The general histories of the United States have been written by Eastern men, and few of their writers have been tall enough to look over the Appalachian range and see what has happened on the other side. The story of the Revolutionary War has often been told without a mention of the campaigns of George Rogers Clark, who, as a Virginia partisan and with an intelligence and valor which have not been surpassed in ancient or modern warfare, captured from the British the North-western Territory, and holding it until the peace of 1783,

secured to this Nation the Mississippi River and the great lakes as boundaries.¹ The Ordinance of 1787, if any mention be made of it, has often been despatched in about five lines. "The glory of the Northwest," said Senator Hoar, in his recent oration at Marietta, "is the Ordinance of 1787. It belongs with the Declaration of Independence and the Constitution. It is one of the three title-deeds of American constitutional liberty."

The Northwest has had its own annalists; the earliest being honest, unlettered men, who, without books or authentic documents, mingled much which was traditional and inaccurate with their otherwise truthful narratives. Nevertheless, such rough annals as Doddridge's *Notes*, Withers's *Border Warfare*, and Gov. Reynolds's "Pioneer History" and "My Own Times," cannot be spared. Scarcely any books of Northwestern origin and imprint appeared until the second quarter of the present century. Within this period, or earlier, several educated men came from the East and gave their attention to Western history: Caleb Atwater, Timothy Flint, James Hall, Jacob Burnet, Samuel P. Hildreth, James H. Perkins, and a few others.

It is not my intention to give a list of the early books on the Northwest, and much less of the later publications, which are many and valuable. My purpose is:

¹ "3. That, if a right to the said territory depended on the conquests of the British posts within it, the United States have already . . . by the success of their arms obtained possession of all the important posts and settlements on the Illinois and Wabash, rescued the inhabitants from British domination, and established civil government in its proper form over them." (Instructions of Congress to Mr. Jay, October, 1780, *Secret Journals of Congress*, II., 329.)

"From a full confidence that the Western territory now contended for lay within the United States, the British posts therein have been reduced by our citizens, and American government is now exercised within the same." (Report written by Mr. Madison entitled "Facts and Observations in support of the several Claims of the United States," *Secret Journals of Congress*, August, 1782, III., 199. N. Y. Hist. Collec., 1878, p. 139.)

"He [Vergennes] intended to resist the claim which the colonies had invariably advanced of pushing their frontiers as far west as the Mississippi, . . . and to leave the country north of the Ohio to England, as arranged by the Quebec Act of 1774." (Fitzmaurice's "Life of Earl Shelburne," II., 169.)

1. To suggest some points in Northwestern history which need to be investigated.

2. To consider the sources of, and facilities for, such investigation and how they may be improved.

For more than a century after the Northwest had been traversed by French explorers and traders, its history pertained to that of Canada. The voluminous writings of those explorers have been studied by many historians, but by none so thoroughly and critically as by Mr. Parkman; and the results are embodied in his charming series of books. His writings, scholarly, picturesque, and entertaining as they are, have not exhausted this field of research. On the other hand, they have imparted a new interest to the original authorities. The narratives of Champlain, Lescarbot, La Salle, Marquette, Tonty, and Hennepin, and the Relations of the Jesuits, were never read with so much interest as now, and they furnish abundant themes for fresh research.

How La Salle busied himself during the years 1669 and 1670, where he traveled, what he saw, and whether he then discovered the Ohio and Mississippi rivers, are questions still unsettled. There are early but questionable statements that he discovered the Mississippi river three years before it was seen by Joliet and Marquette, who supposed that they were the discoverers. He may have found the Ohio river, and followed it down to the falls at Louisville; but it is not probable that he reached the Mississippi river. The student will be fortunate who will clear up these uncertainties.

The name of Father Louis Hennepin has been clouded with the charge that he was a dreadful liar. Mr. Parkman has expressed the current opinion of him by saying: "His books have their value with all their enormous fabrications. Could he have contented himself with telling the truth, his name would have stood high as a bold and vigorous discoverer."

Father Hennepin's character in no other respect has been impeached; and while in America he bore the reputation

of a fearless, circumspect, and self-denying priest. When stationed in Canada he would start out in the depth of winter with a little chapel service on his back, and travel twenty or thirty leagues on snow-shoes, that he might baptize dying Indians and harden himself for his rough pioneer work. With two companions he explored, in 1680, the Mississippi river north from the mouth of the Illinois river, discovered and named the Falls of St. Anthony, and wrote the earliest book of travels in the Northwest. The general truthfulness of this book has never been questioned; and its popularity has exceeded that of all other contemporary publications relating to North America. May there not be some mistake in the severe judgment which has been passed upon the character of Father Hennepin? That there were falsehoods and frauds in later publications which bore his name is true; but what part of the culpability of those frauds, if any, rests upon him, is a question which needs a new and careful investigation.

He went back to France in 1681 or 1682, and never returned to America. He brought out his "*Description de la Louisiane*" in 1683. The book was translated into German, Dutch, and Italian, and six editions appeared during the next six years. No English translation, however, appeared until six years ago. English readers have therefore taken their views of Father Hennepin from the later publications, of which there were English translations, and of which I am about to speak.

If Father Hennepin's book-making had stopped in 1683, and, doubtless, if he had kept clear of unscrupulous book publishers, no charge of mendacity would have been brought against him. All his troubles and bad reputation grew out of the publication of two later books—the "*Nouvelle Découverte*," at Utrecht, in 1697, and the "*Nouveau Voyage*," at Utrecht, in 1698. The popularity of these two books exceeded that of the first publication. Of the former, eighteen editions appeared—eight in French, six in Dutch, two in German, and one in English. Of the latter, ten editions were issued, making in all thirty-five editions

of the three books which bore his name as author. The matter of the second book, the fraudulent portions excepted, was substantially the same as that of "Description of Louisiana," of 1683; but it was re-written, enlarged by narratives stolen from other writers, and amplified by fraudulent claims and absurd errors which no person who had visited the country would make.

The most idiotic claim in the edition of 1697 was, that the alleged writer, before ascending the Mississippi to the Falls of St. Anthony, descended the river to its mouth. For a description of the voyage there was inserted the pilfered details of one made by La Salle in 1681, written up by Father Membré, and printed in Le Clercq's "Etablissement de la Foi," in 1692. A voyage of 3,260 miles, half of it against the current, was a physical impossibility during the thirty days assigned to it. The fraud was detected in Europe as soon as the book appeared, and was a sort of mendacity which a person who was ignorant of the country would be likely to indulge in. In his first book, Hennepin spoke truthfully, and only of his voyage to the North.

The historical method of assigning responsibility is the charitable one of requiring evidence which has the semblance of proof; and especially when, as in this case, the probabilities of innocence are greater than those of guilt. Dr. Shea, in the preface of his translation of Hennepin's "Description of Louisiana," shows a strong presumption that Father Hennepin was not responsible for the fraudulent features of the two later publications.

Thirteen years after the issue of his first book, during which period he performed honorable clerical service, Hennepin proposed to issue another publication, in substance a second edition of his first book; and he prepared for it a personal account of his experiences since he returned from America, and some incidents in, and illustrations of, his Western travels not contained in his first publication. Whether the rewriting of the narrative, or of any part of it, was done by him is uncertain, and, on the whole, not probable. The earlier portion, by whomsoever rewritten,

was well done. Mr. Parkman says of it: "Fortunately, there are tests by which the earlier parts of his book can be tried; and, on the whole, they square exceedingly well with contemporary records of undoubted authenticity." In other words, the earlier parts of the book follow closely the narrative of the first publication. The fraudulent chapters come in later.

Hennepin sought for a publisher at Amsterdam, but without success. At this time, having suffered persecution from the French government which he ascribed to the enmity of La Salle, he had gained the friendship of William III. of England, and desired to return to his mission work in America under English auspices. He then applied to William Broedelet, bookseller, of Utrecht, with more success.

We know nothing of his arrangements with Broedelet; but the publisher probably took in the situation—that Hennepin was desperately in need of a publisher. Reprinting a book which had passed through seven editions was not a promising venture, even with some manuscript additions by its author, several pictorial illustrations and a new title-page. Could it not be re-written by another hand, enriched by other narratives, and all appear as the work of Father Louis Hennepin, the most popular annalist of the time on American affairs? Such thoughts may have occurred to the mind of the thrifty publisher. The priest was unversed in the pit-falls of the book trade; and with a liberal sum of money in hand was likely to sign any contract tendered him. If a contract between Father Louis Hennepin, Récollect missionary, and William Boedelet, bookseller, of Utrecht, Holland, could be found, it would doubtless prove to be that sort of a contract in which every right is given to the party of the second part, and nothing to the party of the first part. The race of merciless and unscrupulous book publishers, who have disappeared in our day, flourished two centuries ago.

Whatever might have been the terms of the agreement between Father Hennepin and his publisher, the book itself shows that it was tampered with after it was printed, by the

insertion of foreign matter printed on different type and in another office, which caused a duplication of the paging.

Some historians have made the further charge against Hennepin, that his first book was a plagiarism of a manuscript, "*Relation des Découvertes*," compiled from La Salle's letters. The explanation of this charge is simple. La Salle took Father Hennepin with him on his Western journey of exploration, in 1680, as his scribe and annalist. In the reports of the exploration which he sent home to France he embodied, as his own, the narrative written by his subordinate, as he had a right to do. The subordinate also had the right later to print his own narrative. That Hennepin was the writer, in instances where the two narratives are the same, appears from the fact that they describe events and side-excursions when La Salle was not present and Hennepin was.¹

The different orders of the clergy in Canada were then in constant quarrels. Hennepin, a Récollet, had no favor in the eyes of Jesuits. La Salle hated the Jesuits, and had the propensity to wrangle with and make himself obnoxious to everybody except his savage retinue. His letters and those of the clergy abound in charges of falsehood and trickery, in backbiting and all uncharitableness. Hennepin did not escape this fusilade of personal bickering; and yet his own narrative, as first published, is singularly free from reflections upon the conduct of others.

To some young and enthusiastic investigator, the literary and personal history of Father Hennepin will afford an

¹ The third publication bearing the name of Father Hennepin, the "*Nouveau Voyage*," printed at Utrecht, in 1698, is made up from Father Le Clercq's book, and the "*Manners and Mode of Life of the Indians*" contained in Hennepin's first publication. It has a most extraordinary preface which scores the critics of Hennepin's second book without mercy. It defends the truthfulness of Hennepin's alleged voyage down the Mississippi, asserting that the distance was only three hundred leagues, and that the voyage could easily be made in thirty days. It also states that the account of LaSalle's voyage, printed by Le Clercq, was stolen largely from a manuscript copy of Hennepin's description, which he (Hennepin) left with Father Le Roux at Quebec. There were liars in those days. If Hennepin was the writer of this preface, a defense of his reputation is hopeless.

excellent subject for study. The date of his death is not known, and the record of his life subsequent to the publication of the books which bear his name is a blank. It is not probable that he will prove to be a saint, for he was vain and ambitious, claiming for himself more importance in the expedition than his humble position of scribe and priest entitled him to; but it is not probable that he deserves the character assigned to him by modern historians—that of an idiot in deception and a monster in mendacity.

Of the French "Company of the West," organized, in 1717, as a part of the financial scheme of John Law, we know but little, and need to know more. It brought into the Illinois country, under M. Pierre du Boisbriant, a large immigration of mechanics and laborers from France, of negroes from St. Domingo, some soldiers, and several military engineers. Agriculture after European methods was introduced, the lead mines were opened, and Fort Chartres was built, first of wood and then of cut-stone, making it the best-constructed and strongest fortification on the continent. Its ruins, once on the banks of the Mississippi, and now, from a change in the bed of the river, a mile away, inspire amazement that such a fort should have been built at that time and in such a place. It covered an area of four acres, and the nine buildings it inclosed were also of cut-stone, with windows furnished with iron shutters, hinges, and sashes.¹ The annals of Fort Chartres and its early surroundings will furnish another interesting subject for study.

The social condition of the early French and Canadian settlers in the Illinois country is by some writers represented to be of Arcadian simplicity and innocence. Other writers give them a very different character. It would be well if we knew more of their actual social condition.

We have no life of George Rogers Clark, or full history of the stirring events in which he was an actor. The notices

¹ New York Colonial Docs., X., 1162.

of his life which have appeared in print are full of inaccuracies. His own manuscripts and much other material concerning his life are in the possession of an eminent student of Western history residing at Madison, Wis. The "Calendar of Virginia State Papers," and "Haldimand Collection" at Ottawa, bring out many facts supplementing his own printed reports. In the "Haldimand Collection" is the official report of Henry Hamilton, Governor of Detroit, on his campaign and his capture by Col. Clark at Vincennes, Ind., in 1779. This report gives us, from the British standpoint, the facts we have needed concerning that important event. On the whole it confirms the accuracy of Clark's several narratives. Clark regarded Hamilton as responsible for the inhumanities committed upon the Western settlers by the Indian scalping parties sent out from Detroit; and hence Clark called him "the Hair-buying General," and treated him with great severity. The governor and council of Virginia held similar views of Hamilton, and treated him in like manner during the two years he was their prisoner. Hamilton in his report defends himself from the charge. He admits that he sent out the Indian parties; but states that he was very careful to give the savages instructions not to scalp their captives; and he was confident that they obeyed his instructions, because some prisoners were brought in. He states that he engaged in this sort of warfare with great reluctance, and then only on Lord George Germain's positive instructions.¹

The story of the butcheries practised upon the Western settlements, during the Revolutionary war, by Indian scouting parties sent out from Detroit, can hardly be exaggerated. To avenge these inhumanities was a leading motive of Clark and his men in making that winter campaign against the "Hair-buying General" at Vincennes. The policy of the British government in its conduct of the war in the West is a subject which will repay investigations; and Gov. Hamilton's defense and his scheme of giving wild savages Sunday-

¹ The report of Gov. Hamilton is printed in Michigan Pioneer Collections IX., pp. 489-516.

school instruction in the humanities, can then be considered. What those many gross of "red-handled scalping-knives"¹ were for, which regularly appeared in the official requisitions of merchandise wanted at Detroit, can then be explained.

For nearly a century the origin and history of the Ordinance of 1787 were veiled in obscurity, and the most conflicting statements were made concerning them. During the last twelve years the tangled threads have been unraveled, and the subject has been a prominent theme with all general writers on the Northwest. The main facts concerning it are now well established—that it was drafted as a part of the scheme devised by the Ohio Company of Associates, formed in Massachusetts, for buying and settling a large tract of land in Ohio on the Muskingum river; and that it was enacted by the unanimous vote of Congress in furtherance of that scheme. As Dr. Manasseh Cutler was the director of the company, who, with a sagacity and ability unsurpassed, conducted this business before Congress, and made the land purchase, the main credit of the enactment of the Ordinance and of its beneficent results have been generally awarded to him. He was entitled to great praise; but to his associate directors, Gen. Rufus Putnam and Samuel Holden Parsons, and to prominent members of Congress—a majority of them Southern members—a large share of the honor is due. The authorship of the Ordinance has been earnestly discussed by some of the recent writers, and they have attempted to fix it upon some individual. No one, I think, in the present state of the investigations, can be regarded as its author. It came from a committee, and what occurred in the sessions of that committee is not known. The scribe of the committee was Nathan Dane, and if the manuscript of the final draft, which is now lost, could be found, it would probably appear in his handwriting. The manuscript of the sixth article of compact—the article prohibiting slavery in the Northwestern

¹ Farmer's "History of Detroit," pp. 246, 247.

Territory and States—is extant, and is in his handwriting. Mr. Webster asserted, in 1830, that Mr. Dane was the author of the ordinance. Mr. Dane in a letter to Rufus King, written three days after its passage, stated that he "drew it"; and on four occasions¹ from thirty-seven to forty-four years later, when all the persons associated with him in 1787 had passed away, and his memory had failed, claimed for himself the whole credit of the Ordinance. On this statement it is easy to assume that Mr. Dane was its author. Other facts, however, are not in harmony with this conclusion.

The handwriting of the committee's draft would not show the authorship of the Ordinance, or of the principles and measures contained in it. The draft, under instructions, might have been written by a clerk; and the main features may have originated with any member of the committee, or been furnished from some outside source. Mr. Dane's record does not favor the theory that the Ordinance was his.

As a Massachusetts delegate he was not in sympathy with the scheme of Western settlement, and was not in intimate relations with the promoters of the Ohio Company, although they were Massachusetts men. The directors expected nothing from the Massachusetts delegates, and worked independently of them. Gen. Rufus Putnam, writing to Gen. Washington (who gave the Ohio Company his earnest support), said that he could not bring these matters to the notice of the Massachusetts delegates, as they had lands of their own for sale; "and I dare not," he adds, "trust myself with any of the New York delegates with whom I am acquainted, because that government is wisely inviting the Eastern people to settle in that State."² The directors of the company looked to Virginia and the Southern States for the support they needed, and

¹ In his "Abridgment of Am. Law," 1824. VII., pp. 389, 390; IX. (1830), Appendix pp. 74-76; in letter to Daniel Webster, March 26, 1830, *Mass. Hist. Soc. Proceedings*, 1867-69, p. 475; and in letter to Indiana Hist. Soc., May 12, 1831, printed in *New York Tribune*, June 18, 1875.

² "Life of Dr. Cutler," I., p. 176.

there they found it. Mr. Dane was the delegate from Dr. Cutler's own district in Massachusetts, and was born in the parish where Dr. Cutler preached; but the Doctor did not take him into his confidence. When preparing for his visit to Congress, he looked elsewhere for introductions, and procured letters from Gov. Bowdoin, President Willard, of Harvard College, and other personal friends. Six days after the enactment of the Ordinance, and while the land purchase was under consideration, the Doctor made in his journal an inventory of his supporters among the delegates in Congress, and of those from whom he expected opposition. In the list appears this sentence: "Holton" (who was a delegate from his own county in Massachusetts), "Holton, I think, can be trusted. Dane must be carefully watched, notwithstanding his professions."¹

The subject of an Ordinance for the Northwestern Territory had been before Congress for more than three years, had been much debated, and many schemes proposed had failed. On September 19, 1786, Mr. Dane was placed on a committee to draft such an ordinance. Here was the opportunity for him to have won such renown as an ordinance-maker as would be unquestioned. The committee reported April 26, 1787 an ordinance which had no prohibition of slavery, no articles of compact, nor any of the provisions which have made the Ordinance of 1787 so memorable. The draft of April 26th probably embodied Mr. Dane's opinions and policy at that time. It took its first and second readings, and was before Congress for its third reading and enactment when Dr. Cutler arrived in New York on the afternoon of Thursday, July 5th. On Friday, July 6th, Dr. Cutler began his work; and by the following Friday, July 13th, the draft of April 26th had been laid aside; another committee had been chosen to prepare a new Ordinance; the committee had reported; the new draft had taken its three readings on three successive days, and had been enacted by the unanimous vote of all the States. Such rapidity of action arrests attention, and demands an

¹ "Life of Dr. Cutler," I., p. 294.

explanation. It is not only unique in the annals of American legislation, but the Ordinance enacted was radically unlike any of the drafts which had preceded it, and had a foresight and political sagacity which has challenged the admiration of statesmen, and yielded the most beneficent results.

Is it possible that the new Ordinance was devised and drafted in about one day,—on the refined and complicated plan so elaborately explained by him many years later,—by one who had shown such indifference to, and lack of knowledge on, the subject, as had Mr. Dane? In his letter to Rufus King, written three days later, while stating that he “drew it,” he spoke of it apologetically as a piece of patchwork hastily got up. Its statesmanship, of which nearly a half century later he was so proud, he was then wholly unconscious of. Dr. Cutler might have told us in his journal how this rapid action came about, and who was especially entitled to the credit; but he did not, and the facts have not come to light from any other source. The new committee to prepare the Ordinance was appointed on Monday, July 9th, and the sessions began at 11 o'clock, A.M. On Tuesday the draft was so far completed that it was referred to Dr. Cutler for amendments, and was returned by him to the committee in the afternoon. On Wednesday it was reported to Congress and printed without the anti-slavery article. On Thursday it took its second reading, was amended, and the sixth article prohibiting slavery restored; and on Friday, July 13th, it took its third reading, and was enacted.

Dr. Cutler's journal accounts for every moment of his time after he had arrived in New York, and shows that he could not have drafted the Ordinance there. On Sunday, the only day of leisure he had, he attended divine service three times, dined with Sir John Temple, the British Consul-General, in company with other guests, ate a heavy English dinner, and took tea with Ebenezer Hazard, the Treasurer of Congress. On Monday and Tuesday, however, he had three conferences with “the committee,” just before, and while the final draft was in consideration. His record on

Monday is: "Attended the committee before Congress opened, and then spent the remainder of the forenoon with Mr. Hutchins,"¹ the Geographer of the United States. The committee on the Ordinance was not appointed until later on the same day. "The committee" of which he speaks must, therefore, have been the committee on the land purchase, appointed May 9th (on the petition then presented by Gen. Parsons), and consisting of Mr. Carrington and Mr. Madison of Virginia, Mr. King and Mr. Dane of Massachusetts, and Mr. Benson of New York. Three of these gentlemen, on July 9th, were not in the city, and hence there was no quorum. Mr. Madison and Mr. King were members of the Constitutional Convention then in session at Philadelphia, and Mr. Benson was not present at any session of Congress after May 10th, during the year. Mr. Carrington and Mr. Dane, the remaining members, were a quorum for conversation, if not for business; and, with Richard Henry Lee of Virginia, Mr. Kean of South Carolina, and Melancthon Smith of New York, were put on the committee appointed that day for drafting an Ordinance. Later in the day Dr. Cutler had a second conference with "the committee," which was probably the Ordinance Committee just appointed. He dined on Monday with Dr. Rogers, pastor of the new brick Presbyterian church, in company with six other clergymen. Knowing from his morning interview with the committee what business was before Congress, he was nervous, perhaps anxious, and left the table hurriedly. "It was with reluctance," he wrote in his journal, "that I took leave of this agreeable and social company of clergymen; but my business rendered it necessary. Attended the committee at Congress Chamber."

On the morning of Tuesday the 10th, he had a third conference with the committee, and later dined with Col. Duer, in company with Mr. Osgood, President of the Board of Treasury, Major Sargent, and several other gentleman. The anxiety about *business*, which caused him to hurry away from the dinner-table the day before, had disappeared,

¹ *Ibid.*, I., 236.

and well it might, for he had in his pocket the draft of the Ordinance which was to be reported to Congress the next day, and which the committee had submitted to him for amendments. He was happy, and entered with zest upon the full enjoyment of the feast. With courteous pleasantry he compliments "Lady Kitty," the wife of Col. Duer (who was the daughter of Lord Sterling) and comments sportively concerning the other guests. "Col. Duer," he says, "is Secretary of the Board of Treasury, and lives in the style of a nobleman. I presume he had not less than fifteen sorts of wine at dinner and after the cloth was removed; besides most excellent bottled cider, porter, and several kinds of strong beer." The good Doctor was deceived by the bottled cider with ice in it, "supposing it was a species of liquor I had never before tasted."

These lively comments on the social life in New York at the time we could have spared, if he had told us something about the business done and conversation held at the three conferences with the committee on Monday and Tuesday, of which he gives not the least intimation. All business in and with Congress was then done in secrecy. It was regarded as a breach of faith to speak or write about matters which had not been officially promulgated.

Immediately following the description of the dinner at Col. Duer's house is this paragraph:

"As Congress was now engaged in settling the form of government for the Federal Territory, for which a bill had been prepared, and a copy sent to me, with leave to make remarks and propose amendments, and which I had taken the liberty to remark upon, and to propose several amendments, I thought this the most favorable opportunity to go on to Philadelphia. Accordingly, after I had returned the bill with my observations, I set out at seven o'clock, and crossed North River to Paulus Hook."¹

Would Dr. Cutler have left for Philadelphia at that time if the draft of the Ordinance which had passed through his hands had not been satisfactory to him? and if, knowing

¹ *Ibid.* I., 242.

Art. 2. Sec. 2 of 28 U. S. Code & Revised.

Article the sixth. There shall be neither Slavery nor involuntary Servitude ~~at~~ in the said Territory otherwise than in punishment of crimes whereof the party shall have been duly convicted — provided always that any person escaping into the same from whom labor ~~and~~ ^{or} service is lawfully claimed in any one of the Original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid —

the disposition of the committee and of Congress, he had not been confident that it would contain the article prohibiting slavery? Mr. Dane, in his letter to Mr. King, said, that in reporting the Ordinance to Congress the next day: "I omitted the sixth article prohibiting slavery, as only Massachusetts of the Eastern States was present; but finding the house favorably disposed on the subject, after we had completed the other parts, I moved the article, which was agreed to without opposition."¹ The omission of the sixth article, obviously agreed upon in committee, shows how little he knew of the temper of Congress, and his lack of interest in the subject. It tends to confirm the suspicions of him which Dr. Cutler had expressed. On the ground that the sixth article of compact was restored to the Ordinance by his motion on the second reading of the bill, he claimed in his later years the whole credit of keeping slavery out of the Northwestern States²; and stated that search being made for the amendment which included the sixth article, it had been found in Mr. Dane's handwriting.

In view of its sagacity and foresight, its adaptation for the purpose it was to accomplish, and the rapidity with which it was carried through Congress, the most reasonable explanation, as it seems to me, of the origin of the Ordinance is, that it was brought from Massachusetts by Dr. Cutler, with its principles and main features developed; that it was laid before the land committee of Congress, on July 9th, as a *sine qua non* in the proposed land purchase; and that the only work of the Ordinance Committee was to put it in a form suitable for enactment. The original draft may have been made by either of the eminent men who were the directors of the Ohio Company—Rufus Putnam, Manasseh Cutler, or Samuel Holden Parsons; but, more likely, was their joint production. Dr. Cutler says that on the day he left Boston, he met Gen. Putnam, and "settled the principles on which I am to contract with Congress for lands, on ac-

¹ *New York Tribune*, Feb. 28, 1855; "Life of Dr. Cutler," I., 372.

² *Mass. Hist. Soc. Proceedings*, 1867-69, p. 478; Dane's Abridg., IX. Appendix, p. 76.

count of the Ohio Company." In passing through Middletown, Conn., on his way to New York, he spent one day with Gen. Parsons, and says in his journal: "It was nine o'clock this morning before Gen. Parsons and I had settled all our matters with respect to my business with Congress." They were the persons most interested in the enactment of such an Ordinance; and without it their scheme of Western settlement would have failed. The New England emigrants must feel that they were taking with them to the Northwest their own laws and institutions. Hence the draft was made largely from the Massachusetts Constitution of 1780, which these settlers had helped to frame. By this Constitution slavery was abolished, personal rights secured, institutions of religion and education fostered, and the most advanced principles in the settlement of estates and the administration of justice established. Mr. Dane, as the Massachusetts member of the committee and most familiar with its laws, was the person to whom the duty of writing the final draft, and reporting it to Congress, would naturally be assigned.

The formation of a new State in the Northwest by a large organized emigration from the East had been a favorite project among the people of New England since the peace of 1783. Col. Timothy Pickering formulated the details of such a scheme. One of its provisions was as follows: "That a Constitution for the new State be formed by the members of the Association, previous to their beginning the settlement; . . . the total exclusion of slavery from the State to form an essential and irrevocable part of the Constitution."¹

On the second topic which I proposed to consider, namely: The sources of, and facilities for the study of Northwestern history, I will first call attention to the collection of original documents in the Canadian Archives at Ottawa, Canada, under the care of our associate, Mr. Brymner, whom we have with us, and who later in our sessions will speak to us concerning the collection.

¹ "Life of Pickering," I., 548.

A large portion of these documents relate to the early history of the Northwest, then a part of Canada. Some of them have been used by Mr. Parkman; but, as a collection, it is little known to writers on Western history. It covers the period from the earliest settlement of Canada to recent dates, and is especially rich in documents of the last century relating to the Northwest, in reference to which our National and State archives are very weak.

The intelligence with which these documents have been collected, arranged, and calendared in print, is most creditable to the Canadian government, and to its accomplished archivist. Mr. Brymner has printed ten annual reports, comprising twenty-six hundred pages of descriptive lists of these documents.

The "Bouquet Papers," from 1757 to 1765, in thirty volumes, and the "Haldimand Papers," from 1758 to 1785, in 232 volumes, are among the most interesting in the collection. Col. Henry Bouquet was the ablest and most brilliant British commander in the French and Indian war, and the hero of the battle of Bushy Run. His life has never been written, and here is the material for the work.

Sir Frederick Haldimand came to America as lieutenant-colonel in 1757; was in Amherst's army at the capture of Montreal; was in the French and Indian war; had command in Florida in 1767; and in June, 1778, succeeded Sir Guy Carleton as governor and commander-in-chief of the Province of Quebec, which then took in the whole Northwestern Territory. He held the position until November, 1784. Every thing which occurred in the Northwest during his administration appears in reports to, or letters from, his head-quarters. His officers at Detroit, St. Josephs, Sandusky, Vincennes, Michilimacinac, Kaskaskia, and other Western posts, reported to him the current news and rumors of the day. The papers cover the whole period of the Revolutionary war.

After a custom of the time, which has now happily passed away, these invaluable papers were regarded as the private property of Gen. Haldimand; but in 1857 they were pre-

sented by his family to the British Museum. The Canadian government has been at the expense of copying, arranging, and printing a calendared list of them for the use of historical students. Our government, when it has made suitable provision for its own archives, should show a similar enterprise, copy them, and print those which relate to the United States. The State of Michigan, in the "Collections of the Pioneer Society," has begun the printing of such of the Haldimand papers as relate especially to the history of that State. The papers printed, however, relate quite as much to the whole Northwest as to Michigan. The entire collection ought to be printed by the United States government; or, if that cannot be done, by joint appropriations of all the Northwestern States.

On February 24, 1779, Gov. Hamilton, of Detroit, as has already been stated, surrendered himself prisoner of war to Col. George Rogers Clark, with Fort Sackville and its garrison—a victory which completed the capture of the Northwestern Territory from Great Britain. On that day Col. Clark wrote to Patrick Henry, Governor of Virginia, a despatch describing his painful winter march across the flooded prairies from Kaskaskia, the storming of the fort, and the victory. The letter he sent off by a messenger to Williamsburg. The messenger was waylaid by Indians and killed, and the despatch was supposed to be lost. Two months later, when he heard of the killing of his messenger, Col. Clark made another report to the governor, from Kaskaskia. The first despatch, having been lost for more than a century, comes to light in the Haldimand Collection,¹ with nine other letters captured at the same time. This precious document, giving details of the campaign and surrender which are nowhere else to be found, has never been printed; and, so far as I am aware, has never been used, except in a brief summary. To which one of the States appertains the duty of printing such documents as these? It is clearly the duty of the United States.

¹ Brymner's Report for 1882, p. 27.

In the Department of State are many collections of public and private papers which would throw much light on Northwestern history, and that of the whole country, if they were made accessible to historical students. Among these are the papers of the old Continental Congress, the Washington, Franklin, Hamilton, Jefferson, Madison, and Monroe papers. Several of these collections have been bought by the government at a large cost. They are not generally arranged nor indexed. Some of the manuscripts are decaying, and are so faded as to be almost illegible. "The great and unique value of these papers," says the present Secretary of State, "and the risk involved in exposing them for examination, have been such as to preclude any arrangement by which ready access to them could be granted to all comers; while the clerical force of the Department is inadequate to respond fully to the many requests upon it for copies." Appreciating the importance of having these papers accessible, the Secretary has issued a circular to historical students stating that he had planned a scheme for their full and complete publication, and has asked for coöperation and support in his application to Congress for the means to accomplish it.

The Secretary of State has not brought his scheme to the attention of Congress, and hence we are not informed as to its scope and details. Important as is the object mentioned by the Secretary, the government should do something more. It should establish a separate and permanent "Department of Archives," or "State Paper Office," such as the other great nations possess. The State Department in its organization, tenure of office, number and training of its employes, and space assigned to it, is not equipped for managing a "Department of Archives." The general oversight of such a department would naturally fall to the Secretary of State; but the practical duties must be under the charge of trained experts not subject to removal with every change of administration.

The State Department has in its possession many valuable papers; but, as a collection of National Archives, it is

very meagre. The establishment of a "Department of Archives" would make this fact apparent, and stimulate the government to make it more extensive. Secretary Frelinghuysen, in commenting on the deficiencies of the historical records in the State Department, has said: "The inadequacy of the archives in my custody to represent the entire history of the establishment of this government has been remarked by every distinguished writer or student who has had access to them."

In connection with the papers of the Continental Congress in the State Department, it may be mentioned as a singular fact, as well as embarrassment to historical students, that the printed Journals of the Continental Congress are not what they purport to be; but are selections, made by the old Secretary, Charles Thomson, on some capricious and incomprehensible principle, from the business done by the old Congress. Legislation on matters of the highest importance is as likely to be left out, as that on trivial subjects.¹ There is a chance of finding the missing records among the loose Continental papers in the State Department; or in another publication called "Se-

¹ The following instances, all relating to a single subject—an Ordinance for the Organization of the Northwestern Territory—will show the character of the omissions: There is no mention in the Journals of a report made by the grand committee of the House on the 24th of March, 1786; nor of a report made by another committee, of which Mr. Monroe was chairman, on the 10th of May, 1786; nor of the appointment of another committee to propose a plan, on the 19th of September, of which Mr. Johnson, of Connecticut, was chairman; nor of the report of this committee made on the 26th of April, 1787. No mention is made in the Journals of the fact that on the 9th of July, 1787, another committee, of which Mr. Carrington of Virginia was chairman, was appointed to prepare an ordinance, who two days later reported the actual Ordinance of 1787, which was enacted two days still later. The fact that the sixth article of compact prohibiting slavery, which had been omitted in reporting the bill, was restored on the 12th of July, is omitted.

Coming down a week later to the Ohio land purchase, the Journals make no mention of a bill which Congress passed on July 19th, and which Dr. Cutler rejected; nor of another bill which Congress passed on July 23d, and was also rejected by him. July 27th, still another bill, on terms which Dr. Cutler dictated was passed, was accepted by him, and the contract was ratified; but the Journal for that day makes no mention of these facts. As if, however, by an afterthought, the matter was inserted in the appendix of the volume.

cret Journals of Congress"; or in still another, "Debates in the Congress of the Confederation," among the "Thomson Papers," printed in the New York Historical Society's Collections, for 1878. It is impossible, from the incompleteness of the printed Journals of the old Congress, to trace thoroughly any matter of public business. On a day when it is known, from other sources, that important business was done, the record in the Journals is barely this, and nothing more: "Congress assembled; present as yesterday." A new and revised edition of the Journals of the Continental Congress is greatly needed for the historical study of that period. The omissions can largely be supplied from the Continental papers in the State Department, and from other sources.

The several Secretaries of State since 1880—Mr. Evarts, Mr. Frelinghuysen, and Mr. Bayard—have called the attention of Congress to the fact that the public and private archives of Europe contain manuscripts of the highest interest to our country, of which no copies, calendars, or descriptive catalogues have ever been made. It is also well known that Mr. B. F. Stevens, an American, and officer of the State Department, residing in London, has for many years been engaged in searching the archives of Great Britain, France, Holland, and Spain, by special favor of their custodians—granted by reason of his official relations with our State Department—has made an index and descriptive calendar, and in many instances *fac-simile* transcripts, of more than one hundred thousand documents relating to American history. They are chiefly between the dates of the treaty of Paris, in 1763, and the treaty between Great Britain and the United States, in 1783—the interesting period of our country's evolution from colonial dependence to State and National sovereignty. Every Secretary of State has warmly approved the work of Mr. Stevens, and has recommended that Congress make a suitable appropriation for the publication of calendared indexes or full transcripts of these hitherto inaccessible documents.

Nearly every historical society in the land, and many eminent individuals, have memorialized Congress for the same object. The Joint Committee on the Library, to whom the matter was referred in the second session of the 49th Congress, unanimously reported such a bill; and if it could have been reached in the pressure of business at the close of the session, it undoubtedly would have passed. The Joint Committee in their report to Congress said: "Restrictions upon the access to, and use of, most of this material are so rigorous, and the expense is so great, that hitherto only few and fragmentary portions of it have been copied, or otherwise made available for historic or even diplomatic use."

Mr. Stevens is still pursuing the work, and is maintaining at his own expense a well-trained staff of assistants and translators who are skilled in the obscure handwriting of old French, Dutch, and Spanish manuscripts. For this outlay of time and money he has had no other remuneration than the appreciating and friendly sympathy of the State Department and the gratitude of American students of history.

In the absence of an appropriation from Congress, he now proposes to issue to subscribers a limited edition of *fac-simile* transcripts of the more important documents in photo-lithography, with an English translation when the document originated in another language. A great government like ours should not require the students of its own history to supply themselves with this material at private expense. Something of the enterprise of the Canadian government should animate the Congress of the United States in the establishment and support of a "Department of Archives" which will be worthy of this Nation.

Dr. Loring's Remarks on Dr. Poole's Address.

At the close of President Poole's address the Hon. George B. Loring asked the privilege of discussing, for the five minutes allowed for debate, the relations existing between Menasseh Cutler and Nathan Dane, which he thought

might perhaps be misunderstood. He desired to avoid an issue with the President, and would not criticise the able and interesting paper to which the Association had just listened, as antagonizing such high authority might be considered presumptuous in him. But as a citizen of the State and county in which Cutler and Dane were born, and which they have made illustrious, and as a careful student of the Ordinance of '87 and the settlement of Marietta, he asked leave to say a word with regard to those distinguished men and the great events with which they were connected. He proceeded to describe the character and harmonious action of both, and to discuss the steps by which the ordinance was perfected and adopted. The time allowed for discussion was so short that he has communicated his views, as presented by him at Marietta on the occasion of an anniversary of the settlement of the town, in 1883, as follows:

The cession, purchase, and settlement of lands in the Northwest Territory constitute a most interesting chapter in the history of our country. We look back upon the cession by the State of Virginia of this vast domain with admiration. We turn to the purchase of such wide possessions, in a time of financial disaster and ruin, with deep interest, as indicating the confidence and energy of our ancestors. And we contemplate the mode and provision of settlement with the same pride that fills our breasts as we recall the devotion and resolute zeal of Plymouth, and rehearse the declaration of principles on which our fathers fought the war of the Revolution. That the attention of an emigrating people should have been turned to the broad landed possessions lying within their reach on the western frontier is not surprising. That a bankrupt government should have readily considered any sound proposition by which a bankrupt people could extricate their national treasury from debt and help themselves into prosperity was to be expected of those who had learned their lessons of thrift during the poverty of peace and the stress of war. That the organic law under which the settlement was made was in accordance with the civil experience and education

of that remarkable body of men, who brought their own customs, doctrines, and institutions to this shore of the New World, is now manifest. To many it was manifest even in their day; evidently, however, not to all. Richard Henry Lee wrote to Washington on the 15th of July, 1787: "I have the honor to inclose to you an ordinance that we have just passed in Congress for establishing a temporary government beyond the Ohio, as a measure preparatory to the sale of lands. It seemed necessary for the security of property among uninformed, and, perhaps, licentious people, as the greater part of those who go there are, that a strong-toned government should exist and the rights of property be clearly defined. Our next object is to consider of a proposition made for the purchase of five or six millions of acres in order to lessen the domestic debt. An object of much consequence this, since the extinguishment of this part of the public debt would not only relieve us from a very heavy burden, but, by demolishing the ocean of public securities, we should stop the mischievous deluge of speculation that now hurts our morals and extremely injures the public affairs."

This view of the ordinance as a measure of finance may have been correct; but of the people for whom it was to become a law, and of its moral purport, it is incorrect and mistaken. The Ordinance of '87 was the result of long and careful thought, guided by that deep understanding of the value of human freedom and personal prerogative which had thus far characterized every popular effort of the American people. It was one step in the progress of popular government, and stands in the line with the Protest at Spires, the compact on the *Mayflower*, the resistance of the colonies, the Declaration of Independence, and the Proclamation of Freedom. The work of engrafting it upon the civil system of the young commonwealths which were to be enrolled under the flag of the American Union fell into the hands of men who were not speculators, or mercenaries, or criminals, or voluptuaries, but who were a sincere, honest, thoughtful, and cultivated body, who went forth to

their work of founding a state from the pulpits and town-meetings and colleges and battle-fields of the most earnest and defiant corner of the earth known at that day. The growth of the ordinance to perfection was slow. In 1784, Jefferson, as chairman of a committee, presented a plan for the government of this Territory. In his ordinance he provided that "after the year 1800 of the Christian era there shall be neither slavery nor involuntary servitude" in any of the new States carved out of this acquisition of empire to the republic. This provision he hedged about with all possible constitutional protection which could bind Congress. This section of the ordinance was lost, however,—the votes of South Carolina, Maryland, and Virginia being against it, North Carolina being divided, and the four Eastern States, New York, and Pennsylvania being for it. The defeat was a source of great mortification and distress to Jefferson. He never forgot it. He denounced bitterly those who voted against the proposition of freedom, and in referring to it he said: "The friends of human nature will in the end prevail." This ordinance, "shorn of its proscription of slavery," was adopted, it is true; but it remained in force but three years, and died when the great Ordinance of '87 became a law. In 1785, Timothy Pickering, whose career in the Continental army, in Cabinet, in the House of Representatives, and in the Senate, stands among the foremost of his time for ability, integrity, and courage, induced Rufus King, then in Congress, to propose once more the exclusion of slavery from the Territories. Mr. King's resolution, offered March 16, 1785, went to the Committee of the Whole and was never heard of afterwards. On April 26, 1787, a committee consisting of Mr. Johnson of Connecticut, Mr. Pinckney of South Carolina, Mr. Smith of New York, Mr. Dane of Massachusetts, and Mr. Henry of Maryland, reported an ordinance which was never voted on and which contained none of the sanctity of contracts, none of the sacredness of private property, none of the provisions for education, morality, and religion, none of the principles of freedom to be found in the ordinance as it now stands in

all its immortal glory. Meanwhile the Ohio Company had been organized in Boston. In January, 1786, Rufus Putnam and Benjamin Tupper, issued a call for a meeting of organization and the association commenced its work. The proposition to purchase 1,500,000 acres of land at one dollar an acre, was, in those days of bankruptcy and poverty, startling. That it should not have been entirely successful is not surprising. But half the sum proposed was raised, and Congress from time to time passed acts relieving the embarrassed company, which secured in the end nearly a million acres of land in three patents issued to Manasseh Cutler, Robert Oliver and Griffin Greene in trust for the Ohio Company.

In securing the contract for 1,500,000 acres of land in the Northwest, which was provided for by Act of Congress July 17, 1787, and in the passage of the ordinance for the Territory on the 13th of the same month, the controlling mind was evidently that of Manasseh Cutler. He had two objects in view: 1st, the settlement of the new Territories of the United States for the benefit of those men in the Eastern States who had been impoverished by the war of the Revolution; and 2d, the foundation of new States there on the best system of government known to the States already in the Confederation. He was a careful and able student of public affairs. His scholarship at Yale College was high. His mind grasped the facts revealed and the processes required by scientific investigation, and the problems involved in political and theological discussions with equal facility and power. He exerted a commanding influence wherever he went. Commencing life on the high seas, he educated himself for the bar and practised for a short time in the courts of Massachusetts. Turning his attention then to the study of divinity, he took charge of a pulpit in Hamilton, Massachusetts, and enrolled his name with that long list of New England clergymen, who in that early period exerted a most powerful influence in the colonies, who called around themselves the cultivated men of the times, took part in all momentous endeavors, and who

sent into every walk in life sons whom they had educated in the colleges out of their narrow incomes and who performed most valuable service as merchants, jurists, physicians, statesmen, divines. As chaplain in the Continental army, as member of the American Academy of Sciences, as negotiator for the purchase of this great Territory, as adviser, pioneer, lawgiver for those opening States, he has left an example which will always be admired, an influence which will always be felt. His pulpit was but twenty miles from Boston. Is it not reasonable to suppose that he listened to the high debate on the great issues of the hour by Samuel Adams, and Josiah Quincy, and John Adams; to the masterly argument of James Otis on the Writs of Assistance; to the voice of the people heard in those defiant town-meetings whose resolves foreshadowed the Declaration of Independence, and reached the ear of the immortal author. He had ridden on horseback from his home in Hamilton to meet the retreating Bristol soldiery as they fled from Lexington and Concord before the fire of the "embattled farmers." He heard the guns at Bunker Hill, mourned for Warren as for a friend, carried comfort and encouragement into the patriot army during the trials of the war. He was surrounded by great men who always turned to him for advise and counsel. Timothy Pickering, the noble Roman of the war was his neighbor. General Glover was one of his early companions. Elbridge Gerry, the young and fearless patriot, was the legal adviser of his people. The home of Nathan Dane was within a few miles of his own. Samuel Osgood, the chairman of the Board of Treasury of the United States, with whom he made the contract for the purchase of these lands, was a citizen of the county of Essex, in which this distinguished group resided, and where Cutler had his home. Is it surprising that when Winthrop Sargent organized his association for the settlement of Ohio, he should have sought the aid and advice of Cutler, whose energy and capacity were well known through all the eastern colonies? Is it surprising that when he had enlisted in the work, the burden should

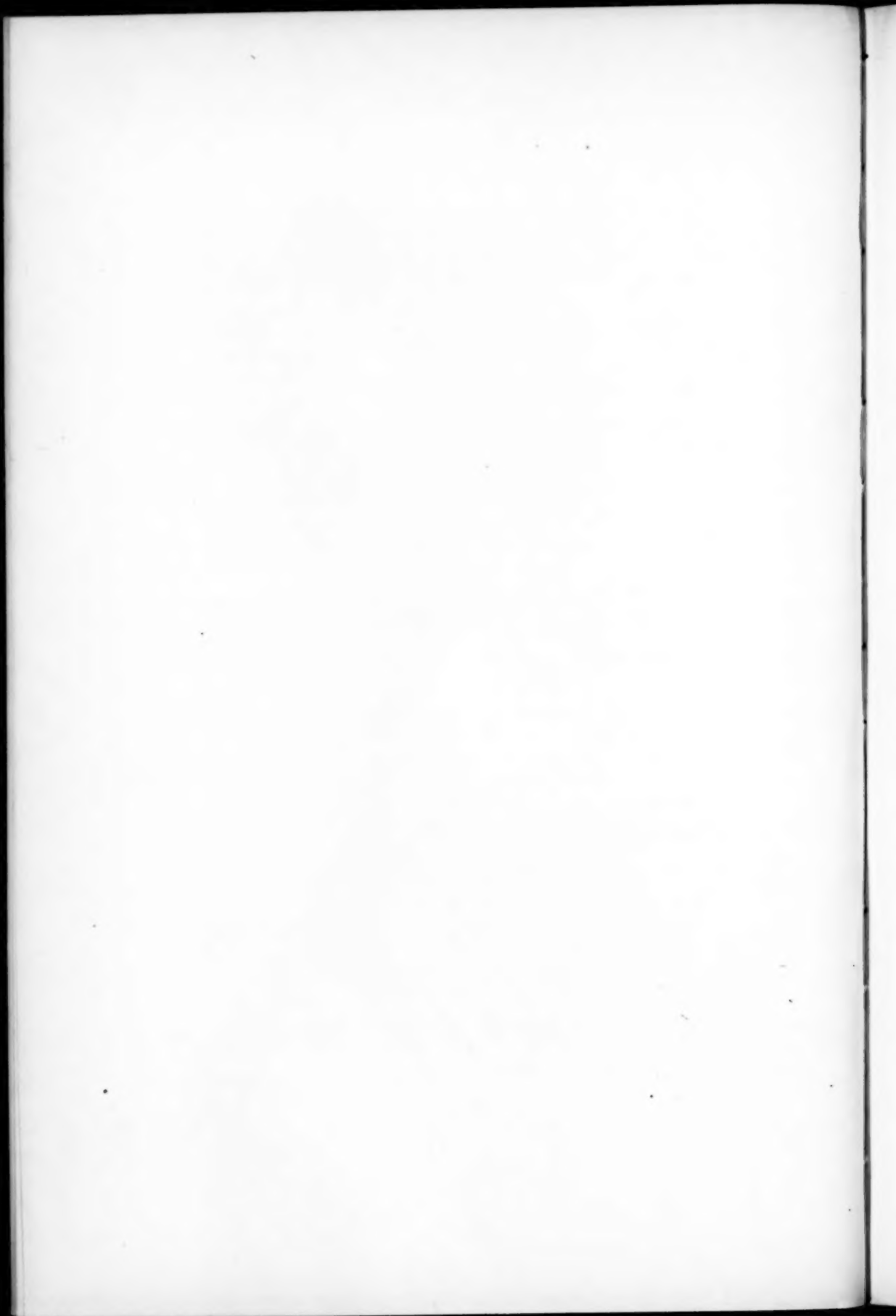
have fallen on his shoulders? At his touch the enterprise was filled with new life. The attention of Congress was at once arrested, and turned to this important measure of multiplying the States in the Confederacy, as it was developing into a republic. The ordinance which Jefferson and King had failed to carry, and which was incomplete enough as it came from their hands, took shape at once and commended itself to Congress. With his contract in one hand, and his ordinance in the other, he appealed to every sentiment of patriotism, interest, and humanity, as each presented itself among the legislators with whom he was forced to deal. In his proposition there were an extension of country, an absorption of colonial securities, opportunities for speculation, the increase of free territory, on the value of which the ablest statesmen north and south agreed,—and he applied each one of these motives as necessity required. Of his ability to fulfil his contract no man had a doubt. Nor could any member of Congress be surprised at the demand which he would make, that the fundamental law of the Territory should conform with the highest and most humane law of the land. The ordinance which satisfied him and his associates secures religious freedom to all; prohibits legislative interference with private contracts, secures the benefit of the writ of habeas corpus, trial by jury, and of common law in judicial proceedings; forbids the infliction of cruel and unnecessary punishments; declares that as religion, morality, and knowledge are necessary to good government and the happiness of mankind, schools and means of instruction shall ever be encouraged; provides that the Territories shall remain forever a part of the United States; makes the navigable waters free forever to all citizens of the United States; provides for a division of the Territory into States, and their admission into the Union with republican government; and declares that neither slavery nor involuntary servitude shall exist within the Territory. Many of these provisions were drafted from the Constitution of Massachusetts of 1780. That the views contained in this ordinance occupied the mind of Cutler at that time there can be no

doubt. He was engaged in establishing a republican government over a vast extent of territory, which he felt would one day, not very far remote, form a most important and influential portion of the United States. He was not to be satisfied with compromises, and he knew, moreover, from the propositions made in the past with regard to the ordinance, that compromises were not necessary to success. He had also ascertained the personal interest in Congress with regard to the occupation of the lands along the fertile valleys of Ohio, and he estimated the strength of his cause accordingly. Every thing connected with the enterprise in which he was engaged roused all his powers, his skill, his wisdom, his adroitness, his faith in republican government; and he summoned all to his work. In the task of framing and presenting this ordinance to Congress he had a most important and powerful ally on the committee to whom the matter was referred. Nathan Dane represented his district in Congress, was his neighbor and friend in Essex County, Massachusetts, and had been all his life under the same social and civil influences as had operated to mould his own views and develop his own character. A calm, conservative, dispassionate, able, and accomplished lawyer, Nathan Dane had not given his mind to the construction of governmental policies, or the reforming of abuses. He had large experience in the Legislature of Massachusetts, and afterwards a short time in the Continental Congress. While Cutler was engaged in rousing the people to resist all acts of oppression, and "rushing to the fray" at the sound of the first gun, and exhorting his flock from the pulpit, and surveying the heavens, and exploring the earth to discover the laws of nature, considering the unoccupied lands of the West as a home for the swarms which were obliged to leave the Eastern hive, and exercising his diplomacy in purchasing those lands, his wisdom in advising the emigrants, and his love of adventure by a solitary journey through the wilderness to the home of their adoption,—Dane was a scholar of high reputation in Harvard College, a diligent student of law in the quiet and cultivated mercantile town of Salem, a

lawyer in the elegant repose of Beverly, a good legislator, a learned expounder of the law, possessed of "great good sense and a sound judgment," "faithful to all his duties," and enjoying universal confidence in his "industry, discretion, and integrity." Cutler was fortunate in having such an advocate on the floor of Congress, and Dane was fortunate in having such a cause and such a client. A proposition which in the hands of Jefferson and King had failed as an apparent abstraction, became a vital issue when presented as one of the indispensable terms of a contract between a large-minded practical philanthropist and the government of a rising republic, called upon to decide the question of freedom at the very threshold of its existence, Dr. Cutler presented himself at the doors of Congress with the terms of purchase in one hand and the terms of settlement in the other, and both were accepted. An unsuccessful measure, which, on two previous occasions, Dane had acquiesced in as a member of the committees of Congress having the matter in charge, became suddenly, under Cutler's force a national necessity. And when the measure was adopted and passed into the great body of American law, Cutler won eternal gratitude and immortal honor as the founder of free institutions in the Northwest Territory, and Dane secured the high distinction of having brought the measure to a successful consummation. Upon the great cluster of States, whose proud and prosperous career was opened by these two statesmen, there rest obligations to their memory which should never be forgotten—obligations which may not be divided between them, the co-workers in this great social and civil accomplishment, in which the designs of one would have been powerless without the coöperation of the other.

Dr. Loring referred also to the fortunate association of Cutler, the thoughtful statesman and philanthropist, and Rufus Putnam, the most accomplished engineer of his time, and General Parsons, the brave soldier and sound lawyer, in the work of settling the Northwest Territory.

THE INFLUENCE OF GOVERNOR CASS ON THE
DEVELOPMENT OF THE NORTHWEST



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BY Professor A. C. McLAUGHLIN, University of Michigan.

Lewis Cass was governor of Michigan Territory and superintendent of Indian affairs from 1813 to 1831. During a great part of that time he had control of Indian posts in Wisconsin, Illinois, Indiana, and Ohio, and in his capacity as superintendent or as special commissioner came into contact with the Indians of the whole Northwest. His after career as cabinet officer, senator, diplomat, and candidate for the presidency has thrown into the shadow, or more properly, perhaps, over-clouded his work of these eighteen years. Yet one may venture to say that those were the years of his greatest usefulness, and that that work has left the most enduring mark on the history of the country.

His name, for various political reasons, has been somewhat slightly passed over in the last twenty years by the citizens of the State with which his name has been most closely connected. He is, however, more intimately associated with the history of the Northwest than is any other man, and to him in large degree is due its progress and development. He treated with the Indians with a fairness that saved the country from a disastrous war during his long governorship. He peaceably acquired title to nearly all the Northwest. He shaped the Indian policy of the general government. He called attention to the wealth and resources of the country. Under his guidance a popular territorial government was quietly put in operation. Against the hostility and craft of the British he upheld the dignity of the United States on the Northwestern frontier. To him Michigan owes to an extent probably never appre-

ciated, certainly to an extent never stated, the surveying of her lands, her settlement and rapid growth to Statehood and to State prosperity.

Only a few items in his credit account can be noticed, but I desire to suggest a few where justice has perhaps never been done even in the two eulogistic biographies written in his lifetime; and I will support my position with statements from the public documents, but especially by facts gathered from a series of Cass's letters hitherto unpublished, that will, I hope, throw some additional light on his work and its influence.

The early life of Cass is connected with Northwestern history. He spent his youth and early manhood in Ohio, was there admitted to the bar, and in 1807 was appointed U. S. Marshal. He was elected to the State Legislature in 1805, and won the attention and regard of President Jefferson by introducing a resolution assuring him of the loyalty of the State. On the outbreak of the war of 1812 he volunteered and accepted a colonel's commission. He was actively engaged the first year of the war, and showed boldness, promptness, and decision, qualifications of a good soldier and efficient officer. Greatly to his chagrin he was included in Hull's surrender, though not at Detroit at the time. His indignation knew no bounds; it is said that he broke his sword that he might not be obliged to give it to the British, and when he was released from parole in the early part of 1813, he was ready to take command once more, and he acted as brigadier-general under General Harrison in the operations of the Army of the West, and, being present at the battle of the Thames, won special mention for valiant service in General Harrison's report to the Secretary of War. He was left in command of the Northwest frontier in the latter part of 1813, and received at that time his appointment as Governor of Michigan Territory. Michigan then included all that part of the Northwest Territory north of a line drawn easterly from the southerly end of Lake Michigan till it intersects Lake Erie, and east of a line drawn through the middle of Lake

Michigan. In 1818 the territory that is now Wisconsin was added to Michigan, and came under his governorship.

His early administration was beset with difficulties. He was possessed of civil but not of military authority. Detroit was in constant danger of attacks by the British and Indians, and though he had no power to take necessary precautions, or to command the few troops there, in case of attack, he nevertheless felt that the obloquy of surrender would fall upon him. We now find him urging the war department that he be given a military command over the troops at Detroit, and in the early part of 1814 he received authority, in case of invasion, and in absence of a general officer of the regular army, to take command as he desired. As long as the war lasted he kept himself informed of the movements of the Indians and the threatened and executed movements of the British, and with his "Pet Indians" he seems to have rendered valuable services in assisting the army and in protecting the country. The British encouraged their savage allies to wage warfare, destructive and barbarous, and in consequence the settlers in the Territory fled for refuge to Detroit, asking support and protection at the hands of the young governor, who was but feebly aided by the Washington authorities.

The end of the war saw things in a pitiable condition, and peace scarcely seemed to smooth his path. Three problems presented themselves, demanding careful attention and prompt solution, each of these requiring painstaking work and the best use of that ability of which events soon proved Cass was well possessed. His work for years may be said to have been largely confined to these problems, and his policy and aims were shaped by the limitations they presented. The first: the destitution of the inhabitants of the Territory. The second: the British interference in a dictatorial way with the rights of United States citizens. The third: the hostility of the Indians, who were constantly incited by the British authorities to an attitude of hostility to the United States government and the settlers in the Western territories.

The destitution of the people was appalling. Before the war affairs had been in a disorganized condition; for the settler, not having good title based on government survey, did not improve his land and encourage immigration by his success. After the war the Territory was a burden on the government. It is surprising that the settlers remained or managed to live at all. The border warfare had been, as Cass testifies, savage and cruel in the extreme, and so destructive that the means of gaining livelihood remained to very few. Provisions were so dear that they were practically unattainable to the poor, and Mr. Woodward, one of the judges of the Territory, is authority for the statement that families at the River Raisin were obliged to subsist on chopped hay boiled. For years Detroit was the most expensive place of residence in the United States, and for years many inhabitants of the Territory were mainly supported by largesses from the general government. The fences, and in some instances the floors of the houses, of the Raisin settlers had been burned for fuel, and the Indians had stolen their clothing and any utensils that they esteemed worth the taking. Four fifths of the inhabitants were of Canadian descent, many of them French-Canadian voyageurs, who as game disappeared settled along the banks of the streams, and there tried to eke out a livelihood by farming, with an ignorance of agriculture that would be scarcely credible had we not the word of Cass himself to stimulate belief. They hauled the manure to the ice to be carried away in the spring. They knew neither how to weave nor to spin. The making of soap for family purposes was but a short time before a novelty that they wondered at, and even the wool of the sheep was thrown away, and not a pound manufactured in the territory by a person of Canadian descent. The extreme poverty of the settlers was largely due to their isolation. For even Detroit was then scarcely accessible. There were no roads worthy the name, and the Black Swamp that must be traversed in going from Cleveland to Detroit was said in those days to warrant an attack of fever and ague if one but rode through its malarial air.

Cass desired that the authorities at Washington should appreciate the condition of the country. Michigan at that time was a point for attack and a burden on the government, and he insisted that one policy, and only one, could make the necessary transformation. Lands must be surveyed and immigration encouraged in order that men of thrift and intelligence might by example and success lead the retired voyageur and trapper to an elemental knowledge of farming. Various sums were turned over by the government to be expended by Cass for the benefit of the suffering poor. His task in seeing this money rightly distributed was no slight one, and there seems to be no complaint of unfaithfulness or inattention. Insisting that help of this sort was a relief, but not a remedy, he began in this connection endeavors to secure the surveying and sale of lands with an earnestness and a zeal that at last had their effect. And he was gratified by seeing Michigan well on the way to Statehood before a call to other duties took him from the charge of her territorial government.

The letters that passed between Cass and Edward Tiffin, the Surveyor-General at Chillicothe, Ohio, indicate the policy and work of Cass and some of the difficulties he had to overcome, and it may be worth while to give them somewhat at length, inasmuch as his efforts in this direction have heretofore never been more than suggested. In 1812 Congress enacted that 2,000,000 acres should be selected in Michigan, to be given as bounty lands to volunteers in the war. At the close of the war 68,000 men were entitled to 160 acres each, in all 10,880,000 acres. Had these 2,000,000 acres been surveyed; had even a small portion come into the possession of actual settlers, the Territory would at once have acquired an independent and secure position, and its early admission as a State would have been assured. In May, 1815, Tiffin wrote Cass that he wished to run the line agreed on at the treaty of Detroit from the mouth of the great Au Glaize River due north. He said he had concluded to make it a fundamental meridian line, to bound the 2,000,000 acres on the west, and he desired also to run

the southerly line from the southerly end of Lake Michigan to Lake Erie, as soon as he could get the consent of the Indians. Having suggested that this consent should be secured by the governor, he was informed in July that the Indian chiefs were to meet in Detroit, and Cass expressed little doubt of his ability to persuade the chiefs to accompany the surveyors in running the line from the Au Glaize, assured the surveyors there was no danger of Indian hostility, and urged that they be in readiness to move. Unfortunately during the rest of the summer there were various hindrances to the accomplishment of their end. A conference held at Detroit was attended by Indians from the west, and the surveyors were instructed to await the result of it, so that not till the 26th day of August was Cass enabled to write to Tiffin that the Indians were less numerous than expected, and evinced no objection to the survey; and he advised that every effort should be made to have at least extreme lines run that autumn. September 4th every thing at Detroit was arranged, Tiffin was urged to begin the work of surveying at once. At least the extreme lines, Cass said, should be run before winter, to indicate that there was earnestness of intention. It was not, however, till the 19th of that month that the surveyors started, and the prospect of a completion of their task that year was not encouraging. These delays and the persistent urgency of Governor Cass are interesting items in Michigan's history. The report that was finally made to Josiah Meigs, Commissioner of the General Land Office at Washington, might not have been made had the governor's persistence had its proper effect, and had the surveyors started out to their task at an earlier day. November 30th Tiffin reported: "The surveyors who went to survey the military land in Michigan Territory have been obliged to suspend their operations until the country has been sufficiently frozen to bear man and beast." Enclosing a description of the country, rendered by the surveyors, who had returned worn out by fatigue and suffering, he advised that the government give the soldiers land fit for cultivation, asserting that the two million acres appro-

priated would not contain one hundredth part of the quantity or be worth the expense of surveying it. The report sent in by the surveyors can scarcely be accounted for, save on the theory of deliberate falsehood, induced perhaps by the dread of exposure and fear of the Indians. Michigan was represented as not much better than a vast swamp or morass. The part not swampy was desolate and barren, and the small marshes between the sand-hills were in general covered with treacherous grass, alluring the unwary with the belief that there was solid ground beneath. And so the conclusion was, that perhaps not one acre in a thousand would be fit for cultivation. Because of these representations, the Commissioner of the Land Office, at the suggestion of the Secretary of War, recommended that the two million acres be surveyed in Illinois, and the President, by special message to Congress, February 16, 1816, suggested the designation of other lands: "As the lands in Michigan Territory are so covered with swamps and lakes, or otherwise unfit for cultivation, that a very inconsiderable portion can be applied to the land grants."

Governor Cass now put forth every effort to counteract the influence of these statements. In spite of the discouraging accounts, he redoubled his efforts to obtain a survey and sale, in order that immigration, however slight, might be attracted, that the falsity of the reports might be proved by the settlers themselves. He urged that settlement was the only method of solving the problem that Michigan's condition presented. The distress of the few settlers whom the Territory then contained could not be hidden, nor did he desire to hide it. But with what must have seemed paradoxical persistence, he advocated, as an end and a means, further immigration to lands that had been officially declared practically uninhabitable—to lands whose inhabitants were at that time dependent on the General Government for support. In March he wrote to the Commissioner (Meigs) on the necessity of surveys if the Territory was to be aught save a burden on the commonwealth: "The quality of land," he says, "has been grossly

misrepresented. From the reports of those in whom I can place confidence, and from my own observation, I think it will admit a considerable population." He also called attention to the confusion resulting from the destruction during the war of all plats of private claims that had been deposited at Detroit. Again in June he wrote, showing at length that the surveyors' reports were false, and asked earnestly for a survey of land between the Miami country on the south and Lake Erie and Detroit River on the east. Without going further into details, it is sufficient to state that his efforts were successful, and April 3, 1818, we find him recommending immediate sale of lands which he now understands are ready for the market. However, he was not yet content. The lands offered for sale were not those most fit for cultivation, and several letters were sent to the Secretary of War, asking for sale of lands in the southeast portion of the Territory. He especially desired that the tier of townships along the River Miami of the Lakes should be surveyed, and brought into the market at once. If these lands had been early surveyed, as Cass desired, they would from the first have been recognized as part of Michigan, and perhaps the Toledo war would have had no place in history. And it is interesting to notice that the governor and judges of the Territory at this time (1818) sent into Congress a long memorial, stating Michigan's claim to the land along the Miami. After giving at length the legal basis of Michigan's claim, the memorialists assert that it must not be said in after years that they did not protest in time.

It is gratifying to notice the progress of the Territory from this time on. The decade from 1820 to 1830 was one of prosperity, and we read in Niles that flour was actually transported from the uninhabitable waste, Michigan, and the editor was ready to prophesy that the Territory would be ready for Statehood in 1830.

The development of the Northwest was affected by the presence of British troops in Canada, and of British war vessels on the lakes. The authorities at Malden, with mis-

directed zeal, constantly attempted to project their authority into United States territory, and the British commanders on Lake Erie, in a peculiarly annoying way, continued to exercise the right of search, that had not been formally given up by the Treaty of Ghent. There is something inspiring, as well as amusing, in the bold attitude of Governor Cass; for it was soon discovered that with a starving Territory at his back, he knew the rights and privileges of his fellow-citizens and was ready to be as bold as need be in defence of them. There can be no doubt, I think, that it was the express intention of the English to dominate in the west just as long as their shrewdness might enable them. And had it not been for the dignified opposition of Michigan's governor, the traffic on the lakes would have been for some time subject to unwarranted interference, and the settlers in the Northwest would have remained for a much longer time in dread of the Indians that British presents incited to hostility.

One or two instances of direct interference disclosed by Cass's letters will indicate the extent of the danger and the promptness of the governor's action, and I shall then pass on to the more dangerous and more insidious attempts, when Cass's sagacity and success were of the greatest value to the whole Northwest.

One of the first subjects of dispute was the treatment of Mr. Chittenden, who had been left at Amherstburg by the United States authorities in charge of some of the government goods. He had been assaulted and driven from Canada, the Indians threatening to shoot him if he returned, and without semblance of trial he had been deprived of property, as well as of his right of residence. Nothing like a decent respect for national authority, not to speak of individual rights, could sanction the treatment he received. Col. James was for some time the choleric colonel with whom Cass had to treat on these subjects, and the correspondence that ensued in reference to the issue just mentioned, disclosing throughout asperity on the one hand and dignified persistence on the other, is indicative of their whole intercourse.

But perhaps the best illustration of the existing situation is presented by an occurrence of September, 1815. There had been a robbery and desertion from one of his Majesty's fleet, and a Lieut. Vidal, with a boat's crew, was sent out to look for the culprit. Found on Michigan soil, he was seized and sent on board; but the lieutenant, caught in the act by the militia, was taken before their commander and by him turned over to Cass as the head of the civil authority. The violent complaints poured in by Sir Edward Owen, commanding his Majesty's fleet on the lakes, served only to draw from Cass a calm disquisition of the rights of a sovereign nation, that did not tend to cool the anger of the British commander, but did serve to sustain the dignity of the country. Vidal was convicted and fined, and though Monroe, after some correspondence between the two governments, ordered the fine remitted if the money had not been paid in by the offender, he expressly stated that he considered the sentence and conviction just. Before Secretary Monroe's letter was received, however, the fine had been covered into the yearning treasury of the Territory.

Various attempts at this time to search American schooners on their way to and from Detroit aroused intense indignation, and after remonstrance from Governor Cass himself depositions on the subject were taken to be sent to Washington. During May and June at least four vessels were boarded from mere wantonness, and Cass asserted that the commander claimed he was acting under orders. However that may be, there seem to have been no similar offences at the time. There were various other acts deserving the epithet arrogant, that called forth the energetic opposition of Governor Cass, one of which deserves mention, inasmuch as it furnishes us with the intent of unwarranted interference and gives in itself the purposes of the British government. October 4, 1815, an Indian was shot near Grosse Isle by one of a company of men from Detroit. A correspondence was at once begun between Col. James and Governor Cass, in which the English officer demanded the punishment of the alleged murderer, and was told at

various times, and with considerable detail, that an English officer or the English government had nothing whatever to do with an act committed on United States soil. Colonel James finally made the assertion (November 1st) that the Treaty of Ghent amply provided for the Indians who had been in alliance with Great Britain, and that even those tribes whose country extended as far as the Mississippi, and who were included in the treaty, looked to him for the fulfilment of the solemn agreement which assured to them ingress and egress through all parts of America, such as they had had previous to the year 1811. October 18th the authorities of the Western District of Upper Canada offered a reward of \$500 to be given to any person securing the perpetrator of the murder they alleged had been committed. A counter proclamation, issued by Cass on the 27th of the same month, had the true ring; for the whole affair was all the more provoking, because the Indian was killed in self-defence, as all testimony went to show. Some clauses from a letter sent to Secretary Monroe give Cass's view of the situation. "The proclamation," he says, "was due to the ungovernable temper of James and designs, which every day more fully discloses, of using every incident which occurs as a means of acquiring and strengthening their influence over the Indians. The Indian was killed as much in this Territory as if in Washington. On the other side of the river the design is avowed of serving their process upon any part of the river or upon any of the islands of it. The tenor and object of their measures is to teach the Indians to look to them for protection. Much sensation is thereby excited, and it is surprising with what eagerness they gave credit to the report that the British would punish the man who killed their countryman. Canada's currency is pounds, and dollars offered show the effect desired to be produced." In a letter of November 15th, also to Secretary Monroe, it is stated that the theory that the Treaty of Ghent gave right of interference, was lived up to and supported by practice, and it is suggested that experience might teach the government where the practice if continued would eventu-

ally lead. Mr. Smith in his life of Cass has referred to this incident as occurring in 1814, before the Treaty of Ghent, therefore, and thus has lost the whole force of the situation.

This was one of the last attempts openly and avowedly to attract Indian allegiance, by actual interference in governmental affairs of the western Territories. But covertly and silently the efforts to control the Indian alliance were continued. In case of another war with the States, England desired to be sure of the assistance of those savage allies who had rendered barbarous and effective service in the past. To counteract these efforts was the greatest task presented to Governor Cass. It was a task that called for all his shrewdness and ability, tested his patience, and confronted him with desperate regularity throughout the whole of his governorship. He used every exertion to win the Indians from British presents and British tinsel. But his undertaking was difficult, and at times hope seemed impossible of realization.

No development of the Northwest was possible, and little immigration could be expected, till it was known that the Indians respected or at least feared the power of the United States. When we see the ability with which Governor Cass managed the Indians, impressing them with a sense of the power and watchfulness of their "Great father at Washington," gradually drawing them from British influence by mingled boldness and adroitness, coupled with a rare knowledge of Indian nature and Indian mode of thought, other evidences of his ability and his other services seem small in comparison, and had he performed no other work, he would have merited the profound gratitude of the Northwest and his country.

For at least fifteen years after the Treaty of Ghent, the English endeavored to retain their influence over the tribes of the Northwest. December 4, 1823, nearly ten years after Cass had been ordered to cease giving presents to the Indians from the United States Government, we find him writing Calhoun, then Secretary of War, that he will use every effort which prudence dictates to prevent the Indians

from passing through the country to Malden to receive British presents, and that a celebrated half-breed as British Indian agent has just passed through the country for the purpose of extending British influence among the Indians. As late as September, 1829, sixty tons of presents were sent to Drummond's Island for the Indians. Some of the Indians within our Territories seem to have been partakers of these gratuities, for large bodies of them passed through lower Sandusky to receive the presents annually distributed at Malden. But these facts argue the difficulty of the task rather than a lack of success. Nothing but an intimate knowledge of Indian nature, and untiring energy, heroic courage, remarkable shrewdness and patience could have prevented, during these years, if not an actual war, such as broke out immediately after Cass's departure from the Territory, in 1831, at least such an expression of hostility and savage ruthlessness on the part of the Indians, that settlements throughout the Northwest would have been perilous if not impossible. One needs to read the treaties as given in the public documents, the speeches he delivered, the accounts given by the companions of his long journeys in a bark canoe from Detroit to the head of Lake Superior, or to Green Bay, or to St. Louis; one needs to examine the admiring statements of the companions of his journeys, Schoolcraft, McKenney, or Trowbridge, who saw him in his work with the Indians, if one would realize in the least the wonderful work of the man, and his wonderful success, in spite of seemingly overwhelming difficulties. There has perhaps never been another man in the country so well acquainted with Indian habits and customs, or another who made better use of his knowledge for the peace and safety of his fellow-citizens. His companions at the Sault Ste. Marie in 1820 never grew tired of telling of his bravery, when he walked, with only his interpreter at his side, into the Indian camp, and in the very presence of the hostile braves tore down the British flag they had dared to raise on American soil. The action is characteristic of the man and his policy. He never showed fear of personal

danger. And the boldness of this deed brought the Indians of the neighborhood into submission to his authority.

The red men, however, not only feared, they respected, him whom the tribes of the Northwest knew as their "Great father at Detroit." If he signed a treaty he strove to carry it out. And, moreover, he strove to enter into a treaty that would give the Indians something of their due. His policy is well set forth in a letter sent to Mr. Calhoun, November 19, 1823, regarding the purchase of some lands on the Muskingum. The land granted to the Indians in 1798 had been encroached upon by whites, and the Indians had consequently taken up residence in Upper Canada.

"I cannot believe," Cass says, "that any explanation is necessary in justification of the pecuniary compensation stipulated to be paid to these people. I should badly discharge the trust reposed in me, and fail altogether in carrying into effect the views of the government, had I endeavored to procure the land at the lowest possible price which their necessities might have induced them to accept. Although they have abandoned it never to return, yet their claim upon it is not weakened by this circumstance. Useless as the grant has become to them, and restrained as they are by our laws from conveying to any but the United States, still the intrinsic value of the property remains the same, and the reunion of the legal and the equitable title will enable the government advantageously to dispose of it." Over and over again such statements of a wise policy accompany his reports of negotiations. An examination of the treaties he made will show that he acquired from the Indians title to a very great portion of the Northwest. But the fact that he entered into nineteen treaties of the utmost importance to the country at large and to the settlers of the Northwest, is not worthy of so much praise as the fact that he conducted these conferences with fairness and treated the Indians with justice. The fact that merits the greatest attention is the equity of his arrangements and the consequent permanence of any agreement. And it is apparent also, that, with all his shrewdness in taking advan-

tage of Indian peculiarities, he used at least some influence to help the untutored savage to something of civilization. While he encouraged in every way the building of schools, and assisted as best he might the work of the Indian missionaries, he held out practical attractions to a settled condition by introducing into treaties stipulations for the establishment of blacksmith-shop or flour-mill in the Indian country. Charges have been made that he obtained his treaties by intoxicating the chiefs. Schoolcraft wrote to Niles denying that the Treaty of Chicago was thus secured. The Rev. Isaac McCoy, author of a work on the history of Baptist missions, states that after the business of the treaty was completed at Chicago, 1821, seven barrels of whiskey were delivered to the Indians, and within twenty-four hours ten shocking murders were the result. But all testimony that is evidence points to the conclusion that Cass made every reasonable effort, at all times, to induce the Indians to forego the use of their beloved fire-water. It is not too much to say that, in consideration of the services rendered as Indian Commissioner alone, the influence of Governor Cass on the development of the Northwest has always been underestimated.

I cannot refrain from a reference to his patient regard for duty amid trying circumstances. A view of his life at Detroit is given us in a communication of September 8, 1815, in which he asks for something like adequate compensation. In 1821 a similar request was sent to Washington, where his difficulties seem to have been appreciated. He had charge of the agencies at Green Bay and Chicago, Fort Wayne and Piqua, and was obliged, of course, to keep under his influence and control the Indians that thronged at times into Detroit. It was no slight tax on an ill-supplied purse to entertain at his table the Indian chiefs, who would have been offended at any omission of such civilities, inasmuch as the officers in Canada were always ready to offer such desirable attentions. His pecuniary responsibility in the transference of money was great during these early years, but we find no spirit of complaint in his two requests for a remuneration for his services.

It is possible only to suggest the work of General Cass for the development of the mineral wealth of the Northwest. He was instrumental in opening up the lead districts of Illinois, and early called attention to the mineral resources of Michigan. November 18, 1819, he wrote Calhoun, then Secretary of War, and asked permission to make an expedition to the northern country for various purposes. Among other things he desired to explain to the Indians the position of the United States Government toward them, to gather information regarding the existence of copper, and, perhaps, to purchase land in the copper region, if found advisable. For this expedition he asked that there be assigned a portion of the sum apportioned for Indian expenditures at Detroit; and in 1820 Calhoun gave consent, and appointed Henry R. Schoolcraft as geologist and mineralogist of the expedition. Schoolcraft's book on the sources of the Mississippi furnishes us with a complete account of their journey and their investigations, the result of which was to call attention to the copper deposits of the North. For Schoolcraft was ready to announce that, with respect to the useful metals, particularly iron and copper, that northern country was undeniably the richest and most extensive locality of these metals on the globe. The published reports were eagerly sought for by the people of the east, and we cannot doubt that its effect was to turn hither eastern capital for the development of northwestern resources.

Between 1813 and 1831 there were many changes in the form of government in Michigan Territory, especially in the direction of granting political privileges to the people. County courts were established, and a Court of Quarter Sessions. In 1818 the people decided that they would not have a territorial legislature. But in 1823 a legislative council was ordered organized by Congress, composed of nine men chosen by the government from an elected eighteen; and in 1827 the people were granted the privilege of electing the members of the council. H. R. Schoolcraft, who was a member of the council for some time,

speaks of the influence of Cass's statesmanship, and of the influence of his personal character. To him is attributed the smoothness with which business was conducted, and the lack of personal or political bitterness. During these years Cass shaped the legislative work of Michigan's council. His elaborate messages at the beginning of each session called attention to the needs of the Territory, and seemed to anticipate by suggestion, but without dictation, all needed legislative action. Only a careful examination of the territorial laws in the light of these messages will give an adequate idea of the formative power exercised by the governor at the meetings of these councils. In November, 1826, he sent a message largely taken up with a discussion of Michigan's title to the land claimed by Ohio, the same question that had been so ably presented by the governor and judges some eight years before. In all these later years of his governorship he exhibits maturity in statesmanship, an accurate knowledge of the condition of the Territory, and an appreciation of the needs of the people; and his voice is always on the side of popular rights and popular privileges, local self-government, and personal political responsibility. His voice in these messages sometimes seems prophetic. Over-legislation by State legislatures he proclaims an evil hard to resist, and frequent changes the bane of law-making.

It is difficult, with the help of any authentic information we possess, to detect political or economic flaws in Cass's administration as Governor of Michigan, and I have already suggested that his work as Superintendent of Indian Affairs is, in my opinion, worthy of almost unlimited commendation. It has been said, in a recent work, that his whole public life will bear the closest scrutiny. That is undoubtedly true of especially the eighteen years of his governorship, and the closer the scrutiny the greater will appear his influence on the development of the Northwest.



THE PLACE OF THE NORTHWEST IN GENERAL
HISTORY



THE PLACE OF THE NORTHWEST IN GENERAL HISTORY.

BY PROFESSOR WILLIAM F. ALLEN.

The hundredth anniversary of the first settlement of English-speaking people within the borders of the Northwest, celebrated at Marietta last spring, has called the attention of our people to the importance of this event in the history of our country. It is not the least significant among the centennial celebrations in which these last years have abounded. But perhaps few have observed that we have this year not merely a centennial anniversary, but a bi-centennial, yes, even a three-hundredth anniversary. In 1688 was the English Revolution; in 1588 the destruction of the Spanish Armada—two events which it would be difficult to match in these centuries for significance in the history of free institutions, and even, we may assert, in their bearing upon the history of the Northwest.

Three hundred years ago Spain was the first power in the world, a nation arrogant, tyrannical, bigoted, grasping beyond even the customary standard of great powers; possessing an extent of territory and an amount of resources, surpassing, I should say, even those of Napoleon when at the height of his power. The territories governed by Philip II. comprised the whole Spanish peninsula, from which he derived the best equipped, disciplined, and commanded army in the world; about a half of the Italian peninsula, then the seat of the highest civilization of the age; the whole of the Netherlands, the most populous, wealthy, and industrious community north of the Alps; considerable portions of what is now France; and the New World, from which he

received yearly immense treasures of gold and silver. This New World, discovered by Spanish enterprise, and granted almost exclusively to Spain by papal decree, had not yet to any appreciable extent been withdrawn from Spanish control. France and England, it is true, refused to recognize the exclusive claim of Spain: their explorers are among the most illustrious of the sixteenth century, and both nations had made attempts at colonization. But these attempts were feeble and short-lived. In 1588 Spain was the only European power that held a foot of ground in North America, and her absolute title was asserted as haughtily as ever. Florida was occupied by a flourishing colony; so was New Mexico; and the country lying between, explored by De Soto and Coronado, had been, it might fairly be said, vindicated beyond a doubt for the Spanish crown. Our Northwest was still unknown, and in the undisputed possession of the savages; but whoever had attempted to forecast the future in that year would have said that Spain was destined almost certainly to extend her empire over the whole of North America.

This mighty Spanish empire was not overthrown all at once, nor by any single person or event; its dissolution was the work of a number of causes, inducing weakness in the governing power, and gradually severing from its rule the greater part of the outlying countries. So far as we can ascribe the result to individual causes, we may say that William of Orange was the person who gave the first serious blow to Spanish domination; but that the event which more than any other brought to light the inherent weakness of Spain, and hastened its decay, was the defeat of the Armada in 1588. It was the fortunate privilege of England to present herself as the champion of free institutions, and the foremost antagonist of Spain in the events which followed.

Ten years after the defeat of the Armada, in 1598, Philip II. died; and less than ten years after this we find both French and English colonies of a permanent character established upon the coast of North America. The At-

lantic seaboard, north of Florida, was irretrievably lost to Spain. Florida and New Mexico were still held firmly in her grasp, but the vast territory between, which we now call the Mississippi valley, remained unknown and unoccupied. The dim and shadowy memories of De Soto's exploration gave no valid title to this territory, because there had been no attempt at permanent occupation. This priceless domain lay ready for the first-comer; and that first-comer was not likely to be Spain, for Spain had lost all enterprise and initiative.

Let us now pass down to the next hundredth anniversary, and inquire what we find in 1688. France had now succeeded to Spain as the leading power of the world. Louis XIV. had taken the place of Philip II. as an aspirant to dominion over the world. The domination of France under Louis XIV. would have been preferable to the domination of Spain under Philip II.; for it represented on the whole the highest civilization of the age; and insolent, unscrupulous and unfeeling as Louis was, his rule did not crush and benumb as did that of Spain under the Philips. But the supremacy of France, like that of Spain, even if not in the same degree, meant the overthrow of national independence and the extinction of free institutions wherever it went; and the best interests of mankind now called for resistance to France, as a century earlier for resistance to Spain. Now as then the man who headed this resistance was William of Orange—great-grandson of the other,—and the nation was England. The Revolution of 1688, which secured to England her free institutions, at the same time brought her into line with the nations of the continent which were arrayed against the ambitious schemes of Louis XIV., and made her the champion of Europe against French aggrandizement.

Nowhere had France gained greater and more significant successes than in North America. This was in a sense the heroic age of the French people; at all events it was the heroic age of the French church, and it was now that the French people threw themselves most heartily into the work

of exploration, discovery, and colonization, as well as of the propagation of their faith. France, as if by right, stepped in and took possession of the vacant tract between Florida and New Mexico, to which Spain had once had a certain claim, but which Spain no longer possessed the enterprise to occupy. The discovery by Nicolet, the exploration by Radisson, Joliet, Marquette, and Hennepin, the occupation by La Salle and Iberville, followed one another with rapidity, and in 1688 France was in undisputed possession of the valley of the Mississippi as well as of that of the St. Lawrence and the Great Lakes. Spain was crowded back to her old possessions on the Gulf of Mexico; England was confined to a narrow strip between the Alleghanies and the ocean, which the enormous empire of New France surrounded upon the north and west. The prophet who had undertaken in 1688 to forecast the future would assuredly have said that North America was destined to be the possession of France.

The Revolution of 1688, placing England at the head of the coalition against France, speedily brought the two nations into collision in the western continent. Frontenac's invasion of New York, Sir William Phips' invasion of Canada, the cruel Indian raids and massacres, the succession of intercolonial wars—these events are familiar to every schoolboy, and have been related with graphic detail by one of our most eminent historians, Francis Parkman. It was soon made plain that France had passed the culminating point of her greatness, and that the star of England was in the ascendant. The first great series of wars, known in our colonial history as King William's and Queen Anne's Wars, ended with the treaty of Utrecht in 1713, by which the entire Atlantic coast was transferred from France to Great Britain. The next great series of wars, known as King George's Wars—the old French War, and the French and Indian War,—ended in 1763, with the Treaty of Paris, which gave to England all that remained of the French possessions east of the Mississippi. As at the same time her possessions west of the Mississippi were conveyed to Spain,

France was by these events utterly stripped of her American territories. It was a collapse of national greatness and aspirations, such as the world has seldom witnessed.

Thus England succeeded to France as the foremost power of the world; and our Northwest, having in the sixteenth century seemed destined to belong to Spain, and having in the seventeenth century been an integral part of the dominions of France, now in the eighteenth century found itself in the possession of Great Britain. The events that followed are well known,—how this territory was vindicated for the new republic by the arms of George Rogers Clark, and the diplomacy of Jay and his colleagues; how the sagacious legislation of the Confederate Congress organized it in the spirit of free institutions, and how then the anniversary year 1788 sealed this series of events by a formal and well-ordered act of organization.

The eighteenth century is not an heroic age. Neither its personages nor its actions are of a character to excite enthusiasm or moral interest. Its wars, illuminated by the exploits of two of the greatest military geniuses of history—Marlborough and Frederick—are not inspired by a single great or fruitful principle; in humiliating contrast with the wars of religion in the sixteenth and seventeenth centuries, or the wars of independence and the revolutionary struggles of the nineteenth. Its diplomacy aimed at nothing but to deceive and swindle. To us of the present day its thought seems commonplace, its poetry flat and prosaic, its society sensual and corrupt. Even that great awakening of mind which we associate with Voltaire, Diderot, and Rousseau, repels us by its crudeness and sentimentality. But selfish and sordid as the century was, in its aims and its achievements, there is one fact that stands out in the history of the balance of power, as an event of more than ordinary importance, the transfer of the leadership in the society of nations to the peoples of the North. The significant fact in the dynastic history of the eighteenth century is the coming to the front of England and Prussia. The greatness of Prussia was reserved for the present century

and generation. In the eighteenth century its growth was rapid, but its place remained second to that of Great Britain. England and the English race now took the lead; and the leadership thus assumed is marked by two events of prime importance and significance—the building up of a British Empire, and the American Revolution.

The British Empire, upon which, together with her maritime superiority, the power of Great Britain, and her ascendancy in the European family of nations, have rested, may be said to have been the creation of the Seven Years' War, and to have come into being with the acquisition of the French colonies in America at the end of that war in 1763. Not that Great Britain was destitute of foreign possessions before this, or that these were her only acquisitions at this epoch. She had already numerous colonies and military posts in various parts of the world; and her Indian empire was founded almost in the same year with the conquest of New France. But these American possessions so far outstripped all her other possessions in extent, in resources, and in compactness, that it may fairly be asserted that it was especially these that made it a British Empire, and that made Great Britain the first power in the world. North America was now partitioned between England and Spain—between the nation which stood first in power and enterprise, and one which had steadily declined in both respects for two hundred years. Mistress of half a continent, with a sluggish and decaying neighbor in occupation of the other half, England enjoyed a prestige and inspired a degree of respect which all the rest of her colonial possessions could never have given her.

We shall see, when we come to speak of the American Revolution, how impossible it is to understand the causes of that event, without an adequate appreciation of the fact just mentioned—that the British Empire derived its greatness directly from its American colonies. At present we will turn to the distinctive character of the British Empire itself, in its relation to the European family of nations.

The great fact, therefore, in the dynastic history of the

eighteenth century is the shifting of the balance of power, by which England succeeded to France in what we may call the *hegemony* or leadership in the European system. This change was not a mere incident, a mere substitution of one unscrupulous and grasping power for another. It marked a radical reconstruction of that European system; a revolution in the temper and character of the domination aspired to. I do not intend to claim for England any higher motives or any less questionable practices than were those of the Continental nations that she superseded; although as co-heirs in the great inheritance of English liberty, we might well be pardoned if we believed that our mother country displayed a cleaner life in her public men, and greater honesty in international relations than her rivals on the Continent. But we must be prepared, in the public affairs of every nation, to find a standard of morality lower than that of private life; and in this respect neither England nor America can claim to be without sin. But this is not the point. The thing to be noted is that the transfer of leadership from the southern nations of Europe to the northern, meant the prominence of a totally different type of national life, and the introduction of a new principle of government. It has been the mission of the Germanic race, which now took possession of society, to preserve and develop the habits and capacity of self-government, and give them a controlling place in European society.

It is not my practice to insist overmuch upon inherent differences in race—a theory upon which a great deal of nonsense has been talked and written. But that different races have independent and well defined traditions and environment, and a disparity of capacities and powers as the outgrowth of these, no person can question. In accordance with this we readily recognize that from some cause lying too far back for us to comprehend, the Germanic race has been distinguished at all ages for its political capacity, and the possession of vigorous institutions of self-government; that there grew up among the nations of this race a well-ordered system of government based upon the rights

of the individual ; and that all the Germanic nations of the North have preserved these institutions in a more or less complete degree of vigor and efficiency.

The nations of this race were never brought under the authority of the Roman Empire, and made to exchange their native system of government for that of Rome ; the victory of Arminius in the Teutoburgian Forest preserved our ancestors from this fate. I would not be understood to deprecate the great services to humanity rendered by the Roman Empire. It was without question a great good fortune for Gaul to be conquered by Cæsar, because the tribal institutions, by which the nations of Gaul were still governed, appear to have received all the development of which they were capable, and to have consisted at this time in the unrestricted rule of an imperious aristocracy, indifferent to the welfare of its subjects and incapable of progress. Vercingetorix was perhaps a nobler and more heroic man than Arminius ; and at any rate the uprising led by him inspires the heartiest human interest and sympathy. But when it failed we cannot feel that humanity or even Gaul was worse off for it ; his success would have been a disaster. So with most of the other nations conquered by Rome. They had passed their prime, and were stagnating in an effete civilization, or trembling under cruel despotism. But with the Germans it was different. It would have been a great calamity if they, with their uncorrupted social life, and their vigorous, though undeveloped, political institutions, had been forced to become subjects to the Roman system. Those German nations which pushed across the bounds, and established themselves upon the soil of the empire, were obliged to submit to this fate. The Goths and Franks lost all memory of their original liberties, and entered into the traditions of the Roman Empire. But free Germany and Scandinavia retained their institutions essentially unimpaired, and with the triumph of England, in the eighteenth century, the Germanic principles of self-government triumphed for all Europe.

For five hundred years the leadership in Europe had been held by nations which dwelt within the bounds of the Roman Empire, and had inherited its principles of unlimited authority and despotic rule. Italy had first exercised this influence, not so much by superiority of material or political force, as by her intellectual maturity, the splendor of her civilization, and the spiritual authority possessed by her ecclesiastical head. With the Renaissance of the fifteenth century the nations beyond the Alps entered into the intellectual life of Italy, which country now lost its intellectual leadership, while the spiritual power of the Pope, with a certain authority growing out of it, as arbiter in international controversies, was destroyed by the religious revolution of the century following. Spain and France, which enjoyed undisputed precedence among nations during the sixteenth and seventeenth centuries, inherited in the fullest degree the traditions and practices of the Roman domination. It was only slowly and feebly that the free institutions of the North asserted themselves successively in England, Holland, Sweden, and Prussia, and wrested a tardy recognition from the autocratic states of the South.

It is not an accident that the moment of the advance of England to the leading place among nations was also a turning-point in the *constitutional* and the *international* relations of these nations. For a hundred years, since the close of the period of religious wars by the treaty of Westphalia in 1648, and of the English civil war the next year, by the execution of Charles I.; during these hundred years the sovereigns of Europe had been engaged in unintermitted efforts to enlarge their territories and increase their power. In all this period it is hard to discern any issue in the wars or the diplomatic relations, except pure greed, or the desire to place a check to this greed, and preserve the balance of power. And in internal affairs the only principle of government was the absolute authority of the sovereign. This principle held sway everywhere except in England, and even in England the more liberal principle

of government was to a great extent neutralized by despotic practice. No country in Europe at this epoch was governed more arbitrarily, with a more complete disregard of popular rights, than Catholic Ireland under the rule of the Whig, or Constitutional party of Protestant England.

After the Seven Years' War, and the Peace of Paris (1763), we meet no more wars of an exclusively dynastic character. Always the rights of the people or of the nationality form an element, and more and more the controlling element, in public relations. Even the Partition of Poland, the grossest and most wanton abuse of absolute power, is a significant event, as for the first time bringing the principle of nationality actively and conspicuously into notice. Then followed the American Revolution, and the revolutionary period was fairly opened, which has lasted to the present day. In the tremendous struggles of the intervening century there have been many moments of reaction and depression, in which popular liberties have seemed hopelessly lost; but the result of it all is that nearly every country of Europe has, first or last, had its constitution remodelled on the plan of that of England, and constitutional liberty of the English type has everywhere, except in Russia and Turkey, superseded the absolute system of government which prevailed universally upon the Continent a century ago. I do not assert that these parliamentary institutions have always been well planned and successful in their workings. I do not overlook a certain reaction against them at the present time, not only in the nations of the Continent, but in England itself. The fact itself of their dissemination is none the less noteworthy and significant.

Along with parliamentary institutions and local self-government, equally with these an outgrowth of the democratic temper, the English race stands for the dignity of labor. No more fundamental contrast exists between ancient and modern society than in the absolute denial in the one, and the hearty recognition in the other, of the claims of industry in the organization of society. Industry in the ancient world was left to slaves and dependants; a freeman was

disgraced by labor. Now, in those countries of the Continent which have derived their institutions and civilization by an unbroken succession from the Roman Empire, industry has continued to be held in the same contempt; and as even the countries of the North have been exposed to this influence in some degree, this aristocratic principle of contempt for labor has had control of society through all modern times. But least of all in England and the countries of Scandinavia. In these the democratic spirit was never extinct; and when England assumed the leadership among European nations, she ushered in the dawn of an industrial epoch, when the arts and avocations of peace shall take precedence of those of war. Even in the present age of enormous and costly armaments, it is noticeable how every one of these military nations is reorganizing its social system on an industrial basis. Railroads, manufactures, the technical arts, scientific agriculture, control society in France and Italy as truly as in England and America.

It cannot be said of this industrial revolution, as it can be said of the introduction of parliamentary institutions, that it is directly and entirely the work of England. It is the modern spirit, the spirit of the age, closely connected with that Christian civilization which forms the chief difference between modern society and ancient. But the English, having come less directly under the influence of Roman traditions than any other of the leading nations of Europe, and having, therefore, preserved more completely their primitive free institutions and the democratic spirit of which these were the outgrowth, are the foremost representatives and the pioneers of this movement. When Napoleon called the English "a race of shopkeepers," he spoke in a spirit of pagan antiquity, in high contempt of any but military interests. The industrial age has its faults and dangers. The shop-keeping spirit is prone to become mean-spirited, sordid, gross. But the nation of shop-keepers manifested a military energy and efficiency which humbled the great Napoleon himself, and it is a significant fact that Prussia did not lend her hand to the work until her social institutions had

been reorganized in the modern spirit by the reforms of Stein.

Another point may be noted in passing. It is not in the nations thoroughly imbued with the modern industrial spirit, but in those which are ruled by the traditions of the Roman Empire, that that social weakness exists, and those social agitations have originated, which threaten to subvert our social organization. Germany, the home of Socialism, forms no exception to this assertion. It is, it is true, a Teutonic country, and possessed originally the same free institutions as England; but it was brought at a very early date by the conquest of Charles the Great, into close connection with the Romance nations; was thoroughly feudalized, and, while never losing entirely its primitive local liberties, was reduced under the rule of absolutism as completely as its southern neighbors. But it is not too much to claim that in the nations of English race, along with inequalities of condition and inadequacy of law, such as are incident to human nature, there is nevertheless a fundamentally democratic spirit in social relations, which affords no hold to anti-social theories. Labor contests there may no doubt be; but schemes to destroy society itself could never have originated in an Anglo-Saxon community.

The leadership among European nations, secured to England by the Seven Years' War, meant for Europe free institutions and the advent of an industrial age: for America its significance was truly incalculable. Until now the English colonies had ranked third in extent and importance; now they divided the continent with those of Spain. However magnificent the claims of the English colonies, their actual occupation had been only a narrow strip along the coast; and, what is more, they were incapable of expansion, so long as Spain held Florida, and France the Mississippi valley. Now their territories seemed sufficient for an unlimited growth of population. The first great step had been taken toward the realization of the manifest destiny of the Anglo-Saxon race to control the continent of North America. The acquisition of Louisiana, the treaty of Guada-

loupé Hidalgo, the Gadsden purchase—all followed almost by an uncontrollable necessity ; and if some of these steps were marked with insolence and bad faith on our part, the injustice cannot now be undone ; and to the lands themselves it is an almost unmixed benefit that they have been brought under the sway of the English race.

The establishment of the British empire in America brought with it English civilization, English law, English political ideas. The practices of local self-government, parliamentary institutions, the supremacy of law over the will of the sovereign, the place of precedence assumed by industrial interests—all these, which we have found to be the distinctive characteristics of the Germanic political ideals as opposed to those of the Romance nations, were by this event made dominant in the continent of North America.

The method of colonization of the two rival nations, as has often been pointed out, assisted in this. The French occupation, thinly spread over an immense area, consisting of scattered forts, missionary posts, and the isolated cabins of roving fur-traders, testified to the sovereignty of the French crown, but had hardly any points of contact with the French people. It was therefore superficial and transitory. Before the Seven Years' War France ruled supreme over the greater part of the Continent. A hundred years later it had utterly vanished, leaving no traces but a few names. It had no roots. We have our Fond du Lac and Eau Claire and Prairie du Chien, our *cooleys*, *dalles*, and *portages* ; and from these names we know that this land was once a French land. But these towns bear no trace of French origin except their names. English civilization has completely superseded French. For the English colonization was carried on by a slow and thorough process of occupation. Its settlement was compact, orderly, industrious. At every step it was organized in bodies politic, all connected with one another by ties of common origin and common interest. This has been the method of English and American colonization from that day to this—more rapid as new means of transportation and intercourse were

available, more superficial when new lands were opened in a quantity disproportioned to the number of settlers; assimilating foreign elements of population, and bringing them into active relation to its political system; but everywhere busying itself with the foundation and organization of political communities. In this work we meet with many failures, much inefficiency, much positively bad government; but in this, we heartily believe, is to be found the only sure foundation of the future nation, the only guaranty of future liberty.

Thus the statesmanship of Pitt and the victories of Wolfe secured to our Northwest the inestimable treasures of English liberties, English institutions, English civilization. The next stage in our history was the further development of these institutions and the more complete realization of these principles of liberty through the American Revolution.

The characteristic political events of the nineteenth century are the extension of the English parliamentary system to the nations of the Continent, and the spread of the revolutionary spirit—two events which are to a certain extent independent of one another, although both of them are expressions of the Germanic principles of government. In their origin, they are connected with the two great events which, as I have said, marked the predominance of the English race. As the building up of the English empire gave to England a position among nations so conspicuous and controlling that her parliamentary institutions became the model of theirs, so the American Revolution inaugurated the revolutionary epoch in the world's history, setting an example to the European nations which they were rarely capable of following to good purpose, but which at any rate led the way to the triumph of free principles in the end.

The British empire was not established without enormous expenditure, both of men and of money. Weakened as France was in national character, in public spirit, and even in material resources, under a king, Louis XV., whose name is a synonym for sloth and dissoluteness, she never-

theless did not surrender her rank among nations without a tremendous struggle. From this struggle England emerged with increased power and prestige, and far from exhausted in resources, but with a consciousness that these resources had been strained to their uttermost, and in such pecuniary embarrassment as she had never experienced before. It is not my intention to narrate events which are familiar to all, or to enter into the analysis of the causes of the Revolution, which, even if they were not already so well understood, do not belong to my subject. But I wish to bring into prominence the fact, which is not so generally noticed, of the close connection between the American Revolution and the establishment of the British Empire. Upon the acquisition of New France by the treaty of Paris in 1763 rested, more than upon any thing else, the greatness of this empire; but it was this very acquisition that led by an inevitable sequence of cause and effect, to the uprising of the colonies and the severance from the empire of its most important dependencies. The time and circumstances of this uprising are most significant, Says Parkman: "The measures on the part of the mother country which roused their resentment, far from being oppressive, were less burdensome than the navigation laws to which they had long submitted; and they resisted taxation by Parliament, simply because it was a principle opposed to their rights as freemen. They did not, like the American provinces of Spain at a later day, sunder themselves from a parent fallen into decrepitude, but with astonishing audacity they affronted the wrath of England in the hour of her triumph, forgot their jealousies and quarrels, joined hands in the common cause, fought, endured, and won."¹

The American Revolution was the second great act in the newly asserted preponderance of the Anglo-Saxon race. With it commenced the revolutionary era, which has been the most characteristic fact of the last hundred years. I am careful not to say that these revolutionary movements were caused by the American Revolution. They had causes

¹ "Montcalm and Wolfe," II., 413.

enough on the spot, in the oppression and misgovernment inherited from former centuries: the revolutionary era would have commenced in France if it had not commenced in America. Nay, the misfortune was that the European revolutionists did not take example by us. A high enthusiasm, the inspiration which comes from witnessing our success and prosperity,—this is pretty much all that the French Revolution derived immediately from ours. But its type was wholly opposed to ours. The American Revolution was a conservative act, directly in the line of English constitutional history. Our fathers claimed that the mother country had forgotten its own principles, and they arose to maintain inherited and traditional rights, to vindicate the historical liberties of Englishmen. In France, on the other hand, there were no such historical liberties to vindicate, or if there ever had been any, they had been ruthlessly trampled down, and long forgotten. The French people were inspired, in their revolt, by an indefinite craving for something better—they knew not what; the abuses which they wished to be rid of were plain enough, but how to secure themselves against future misgovernment they did not know. The blind groping in the dark, the crude theories, the futile efforts to imitate models which they did not understand, and to adopt reforms for which they were not prepared, lend a pathetic interest to the first years of the French Revolution.

In the republican institutions of the United States the English constitution has received a new development, and a somewhat new form. They are a legitimate and healthy outgrowth of the original Germanic institutions. But to England herself the event has been no less salutary in the complete remodelling of her colonial system, which was a result of the American revolt. The colonial system, the principle that the colonies were dependent provinces, existing only for the advantage of the mother country, to add to her glory and help her citizens to amass wealth: this system was the cause of the American Revolution. Against it the colonists claimed that they were not subjects and

dependents, but citizens, endowed with all the rights of Englishmen. Here was the issue, which was decided by the arbitrament of war. As a mere question of law, possibly it is not so clear and self-evident as our ancestors thought. Some English writers maintain to the present day that our claim was unfounded, and the alleged grievances gave no ground for resistance. But it is not a mere question of law, but of public polity; and the significant fact is that the American theory has, in the result, prevailed, and has become an accepted part of the English constitution. The old colonial system was killed by the American Revolution. The greatness of the British Empire was too firmly founded, and had too active germs of youth, to be crippled or more than temporarily checked even by the loss of its most important colonies. It has gone on enlarging and prospering until, at the present day, it is, for extent and resources, even if not in immediately available military strength, the most powerful in the world's history; and in all its widespread territories, wherever circumstances permit, the genuine English principle of self-government, the principle that the inhabitants are citizens and not dependents, now prevails. The colonial system, which kept our ancestors in a condition of subjection, and led to the war for independence, is dead.

In treating of the relation of the Northwest to general history, it has been necessary to take a rather wider survey than the subject would itself seem to require, and sometimes to speak of the Northwest almost as if its future were those of the country of which it forms only a small part. But it has happened more than once that, in the Northwest, small as it is, we have found the key to problems of a national character. And, in summing up, I wish to emphasize four points, which have formed the principal subject of my paper, and which, I think, will warrant the prominence given to this aspect of our history.

First, the title to the Northwest belonged in succession to the three great nations, Spain, France, and England, which, in the sixteenth, seventeenth, and eighteenth cen-

turies respectively, possessed the acknowledged leadership among the European states.

Second, the leadership acquired by England in the eighteenth century was integrally associated with the building up of the British empire; and the decisive fact in the formation of this empire was the acquisition from France of that enormous tract of territory, of which the Northwest is the centre—the keystone, as we may call it, of the arch.

Third, the imperial destiny of the United States hung upon the possession of this Northwest. But for the military successes of Clark, and the diplomatic skill of our commissioners who negotiated the treaty of peace, in securing just this territory, our domain would have been contracted, our national aspirations would have had no scope, and it is not likely that there would have been the courage to make the purchase of Louisiana and the subsequent acquisitions.

Fourth, the development of our national policy was closely connected with, and, in fact, first took shape in, the ordinance which organized this territory. Our territorial system, our policy of creating new States, our national guaranty of personal freedom, universal education, and religious liberty, found their first expression in the great act which provided for the government of the Northwest.

INTERNAL IMPROVEMENTS IN OHIO, 1825-1850

INTERNAL IMPROVEMENTS IN OHIO, 1825-1850.

BY CHARLES N. MORRIS.

The eighth article of the constitution of Ohio of 1851 forbids the contraction of a State debt, except to supply casual deficiencies in the revenue within specified bounds, to repel invasion and suppress insurrection, and to redeem the outstanding indebtedness of the State.¹ The same instrument also prohibits the State from ever loaning her credit to private companies, or becoming a stockholder in them.²

The debt, amounting at that time to over eighteen millions of dollars,³ was one of the results of twenty-five years' experience with a system of internal improvements built, owned, and operated by the State. When, therefore, the people of Ohio ratified the constitution, they set the seal of their condemnation upon this system. It does not follow, however, that the public works had rendered no service to the people, or that the contraction of the debt was entirely without excuse. It is quite conceivable that the construction of transportation lines by the State may have added to the wealth within her borders more than would ever be taken away in the form

¹ Sections 1, 2, and 3. See Poore's "Charters and Constitutions," Part II., p. 1473.

² Section 4.

³ On January 1, 1850, \$18,916,309.80. Auditor's Report of May 29, 1850, given in 5 *Banker's Magazine*, 203. The framing of the constitution was completed March 10, 1851, and ratified that year by a vote of 126,663 to 109,699. See Poore's "Charters and Constitutions," Part II., p. 1465.

of taxes to pay the State's obligations. This is a difficult problem to solve, and perhaps does not admit of an exact solution at all. Certain it is that the tax-payers felt the pressure of the taxes levied yearly to discharge the interest on the debt.

But the ground for condemnation of the improvement system, if found at all, must be found in the workings of the system as seen in its history; the financiering of the State stocks and interest; the manner in which the works were built and managed, and their influence in the community.

The public works of Ohio were far more successful than those of many other improvement States. In Indiana and Illinois, for instance, the spectacle is presented of undertakings on a scale vastly in excess of the State's ability to provide the means by borrowing; a feverish eagerness in contracting additional loans, regardless of ruinous discounts in selling stock; default on the instalments of interest, ending with bankruptcy of the State and collapse of the public works. Some of these features, to be sure, are seen in the history of the Ohio improvements, but Ohio shines in comparison with the other western States, and, indeed, in comparison with Pennsylvania and Maryland.

In common with all young States, the great need of Ohio at the end of the first quarter of this century was in general, capital, and in particular, good communications with the rest of the country. The State was then almost entirely stock-raising and agricultural, and was rapidly growing. But of what avail was a large crop to the farmer of the interior if he could not get it to market cheaply? The national road from Wheeling into the heart of Ohio was not yet begun.¹ Produce of the interior came but slowly to the river and lake towns for shipment to the eastern market by way of Pittsburgh and Buffalo. Clinton's journey, in October, 1825, over the completed Erie Canal, from Buffalo to Albany

¹ Ground was broken at St. Clairsville, Ohio, July 4, 1825.

and thence to New York city, undoubtedly acted as powerful stimulus to those States already engaged in slack-water enterprises, and incited new States, like Ohio, to begin them. Pennsylvania and Maryland especially put forth great exertions to secure for Philadelphia and Baltimore, now threatened by New York, their share of the western commerce.

The project of building a canal from the Ohio River to Lake Erie was brought up in the Ohio legislature in 1817; but for several years nothing resulted but brief surveys and long reports. By the summer of 1824 the Ohio and Miami Canals were located,—the Ohio, from Portsmouth to Cleveland; the Miami, from Cincinnati to Dayton. It was estimated that they would cost upwards of five million dollars.¹ It had now become clear that the topography of the country admitted of the construction of canals at a moderate cost. Legislation hitherto had been merely tentative and preliminary. The act of February 4, 1825, ought really to be regarded as the beginning of internal improvements in Ohio. The provisions of this act were practically mapped out, however, a month before in the report of the Canal Commissioners, the most prominent member of whom was at the same time Speaker of the House. In this report,² the advisability of getting the canals built privately and chartering companies for this purpose, had been considered. Chartered companies were blackened by the statement that they were popular only in monarchical countries, and the horrors of chartering monopolies were held up to view.³ It was not necessary for the commissioners to ring the changes on the monopoly nightmare to bring over an unwilling legislature. They were already prepared to commit the State to the policy of State ownership. The act passed

¹ Estimate Miami Canal \$2,505,494. Ohio Canal, according to route chosen north of Coshocton, \$2,626,571 to \$2,934,024. (See sketch by S. P. Chase, "Hist. of Ohio," in Chase's "Statutes of Ohio," Vol. I.)

² Report Canal Com., Jan. 8, 1825.

³ See "Ohio Canal Doc.," p. 138.

in the Senate by a vote¹ of 34 to 2, and in the House, 58 to 13.

The measure was entitled, "An act to provide for the internal improvement of the State of Ohio by navigable canals." The main provisions of the act were as follows:

1st. A board of Canal Commissioners, seven in number, appointed on joint resolution of the Assembly, and holding office during good behavior, were to have entire supervision of the construction of the canals and management of all public works when finished. To this board fell the leasing of contracts, and the appointment of surveyors, draftsmen, engineers, collectors of tolls, and all other functionaries needful to the building and running of the works.

2d. A Canal Fund was formed, to consist of "such appropriations, grants, and donations as may be made . . . by the Legislature of this State, and by any individuals, and also all moneys which may be raised by the sale of stock, . . . and the taxes by this act specifically pledged for the payment of interest upon such stocks."²

3d. To sell stocks and manage this fund, three men were appointed, called "Commissioners of the Canal Fund." Like the Canal Commissioners, they were appointed on joint resolution of the Assembly, but so held office that one went out at the end of two years, one at the end of four and one at the end of six years. All appointments after the first were to be for six years; so that a new member might come into the board every two years.

4th. Interest on all loans was limited to six per cent.

5th. The Commissioners of the Canal Fund were authorized to borrow, on the credit of the State, for 1825, not more than \$400,000, and in any succeeding year not more than \$600,000.

For all loans thus contracted they were to issue transferable certificates of stock, redeemable at the pleasure of the State between 1850 and 1875. The distinctive feature of the act was the fact that taxes were pledged for the pay-

¹ See "Ohio Canal Doc," pp. 165, 166.

² Sect. 3.

ment of interest due on stock sold, and to form a sinking fund for the redemption of the principal.¹

It was made the duty of the State auditor to ascertain each year the amount needed to be raised by taxation for canal purposes, and to notify the county auditors of the rate per cent. No tax should ever be levied on canal stock.

On the 4th of July, 1825, ground was broken on the line of the Ohio Canal, at Licking Summit. The occasion was felt to be one of great importance. The Governor and other dignitaries of the State were present. Gov. Clinton of New York came to see the beginning of the "second great national work of internal improvement in the United States."² He was accompanied by several gentlemen from

¹ This was done in the following manner:

1825....	\$40,000 then in Treasury <i>plus</i> \$30,000 to be raised by taxation.			
1826....	Raise enough by taxation to meet int. on am't borrowed in 1826.			
1827....	Raise enough by taxation to meet int. on am't borrowed in 1827.			
	1st.	2d.		
	Tolls and profits of public works }	{ Taxation on grand list. }	= { Interest due in this year. }	Sinking fund raised by taxation for redemption of principal.
1828	"	"	"	\$10,000
1829	"	"	"	20,000
1830	"	"	"	30,000
1831	"	"	"	40,000
Each succeeding yr. until 3 yrs. after completion of canals.	"	"	"	40,000
Each yr. succeeding 3d year after completion of canals.	"	"	"	25,000
				in each year. *

* See Sect. 5.

It was thought that by the time the annual payment to the sinking fund of \$25,000 went into operation, the profits of the canals would be large. It was therefore provided, that when the net profits were more than enough to pay the interest, this installment of \$25,000 to the sinking fund need no longer be raised by taxation.

² Report Canal Com., 10th Dec., 1825 (p. 185, "Ohio C. Doc.").

New York, including Messrs. Lord and Rathbone, who had taken the first loan of \$400,000,¹ and therefore felt an interest in the work. On the 21st of July (1825), work was begun on the Miami Canal, "in the presence," so reads the report,² "of the distinguished chief magistrates of Ohio and New York, and an immense concourse of deeply interested citizens; since which it has progressed with spirit and effect, and is now in a flattering state of progression."

It was the main object, at first, to establish communication between New York city and the interior of the State. So the commissioners directed most of their energy to building the northern section of the Ohio Canal—from the lake southward. The history of the early construction of these two canals is a tale of woe, which, notwithstanding the uniformly bombastic tone of the reports, is apparent. On the Miami Canal, the cost of quarrying stone, for use in the locks, was found to be much greater than was anticipated. The soil of the country through which the canal passed was gravelly; hence, the banks and bottom of the canal were porous, so that the water leaked out as fast as it was let in from the feeders and reservoirs. The spring floods of "Mill Creek" undermined the piers at the aqueduct over that stream, so that, to quote from the commissioners' report, "the powerful pressure of this mass overcame the wall, which on a careful inspection was found to have been built in a very unfaithful manner."³ Then it was found that certain ponds at the head of this same enemy, Mill Creek, would, in the spring, "entirely overflow the bounds of the canal." Hence another additional item of expense had to be incurred in draining these ponds.⁴

Equally unfortunate were the commissioners with their laborers. In 1825 work was much retarded by sickness among the laborers on the Ohio Canal.⁵ In the summer of 1827, fevers were prevalent in the same locality, and

¹ Report Canal Com. Fund, 10th Dec., 1825 (p. 175, "Ohio C. Doc.").

² Dec. 10, 1825, Rep. C. C. (p. 186, "Ohio C. Doc.").

³ Report C. C., 1826.

⁴ Report C. C., 1826, (p. 245, "O. Canal Doc.").

⁵ Report C. C., 10th Dec., 1825; *ibid.*, p. 184; also Report C. C. 1826, "O. C. Doc.," p. 236.

frightened the laborers away. Operations on the Pennsylvania Canal and the national road drew heavily on the labor supply in 1827.¹ In 1826 some of the contractors and sub-contractors absconded² with the money advanced to them, leaving their workmen unpaid. This lapse from integrity frightened the laborers as badly as did the fever, and inflicted serious loss on sundry individuals who had furnished the contractors with supplies.

The laborers on the Miami Canal had another grievance in the depreciation of the bank paper in which their wages were paid. Money used in construction of the State works was drawn, as needed, from New York and placed to the Fund Commissioners' credit, in the Western Reserve Bank and Lancaster Bank, of Ohio, subject to the check of the acting Canal Commissioner. Now the commissioner's checks were honored in the notes of these banks. The notes were given to the laborers. In Cincinnati and the region about the Miami Canal, they were at a discount of two and one-half per cent.³ Somewhat later, the Canal Committee of the Senate⁴ said that steps had been taken to relieve contractors and laborers from difficulties consequent upon the receipt of their wages in depreciated paper. Canal deposits were not, however, transferred to banks nearer the scene of operations. The depreciation is of too little importance, said the committee; besides, the bank was "willing to afford every possible facility to the accomplishment of the grand object of internal improvement which could be expected or wished by the State."⁵ Measures were taken to have the laborers paid directly by one of the commissioners, and to advance no money to the contractors till their work was finished. It was thought to obviate thus the danger of loss through absconding.⁶ Nevertheless, there was still some complaint among the laborers of irregular payments.⁷

¹ Report C. C., 1827.

² Report C. C., 19th Dec., 1826, "O. C. Doc.," pp. 236 and 248.

³ Report Canal Committee of Senate, 18th Jan., 1827. ("Ohio C. Doc.," p. 203.)

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*, and Report C. C., 1827 (Dec. 27th), "O. Canal Doc.," p. 287.

⁷ Report C. C., Dec. 27, 1827, "O. Canal Doc.," p. 287.

The State works seem to have attracted a large part of the energy of the people of Ohio, which might better have been turned to more productive enterprises. In November of 1825, on the northern division of the Ohio Canal, from fifteen hundred to two thousand¹ laborers were employed.

In 1830 the entire population of the State was only 937,679.² In 1826 the commissioners offered one hundred and ten sections, on this same division, for contract. There were six thousand bids.³ It was evident that the public works were regarded as a line of business where contractors could reap a rich harvest of both legitimate and illegitimate profits; the carcass seemed to lie by the canal, and thither gathered the eagles. Though the first commissioners' report states that "most of the contracts have been taken at prices which, with judicious management, will yield a handsome profit to the contractors,"⁴ subsequent competition induced many contractors to send in ruinously low figures in order to secure proposals. The only way for such a contractor to reimburse himself was either to decamp with his workmen's wages or to put in shiftless work. As we have seen, they did both. An ambitious contractor, who had obtained his contract by bidding lower than the nature of the work would warrant, found himself crushed between two forces. On the one side, he had left himself so small a margin of profit that only the strictest economy and the most favorable conditions could save him from bankruptcy; while on the other side, the conditions were often unexpectedly unfavorable.

The shrewd inhabitants in the vicinity of the public works, anticipating a demand, would put up the price of stone, timber, and other materials to an extravagant figure. To be sure, there existed the right of the commissioners to appraise and take materials for the State's use. But, as a rule, the commissioners had no time for details of this kind,

¹ Report C. C., Dec. 10, 1825, "O. Canal Doc.," p. 184.

² 47 Niles Register, 202.

³ Report C. C., Dec. 19, 1826, "O. Canal Doc.," p. 232.

⁴ Report C. C., Dec. 10, 1825, "O. Canal Doc.," p. 184.

and the laws regarding damages were at loose ends, and the basis of appraisal was always uncertain.¹

It is not difficult to see that the State's hierarchy of canal commissioners, fund commissioners, engineers, contractors, and appraisers formed but a poor business corporation.

Having been informed that on the New York canals wastefulness had resulted from the custom of remunerating a contractor in certain cases where the cost of construction was greater than at first supposed, the Ohio officials resolved to hold contractors strictly to the terms of their contracts. "When the rule" (of extra compensation) "generally becomes known and established," said they, "contractors are no longer interested in the economical and vigorous prosecution of their work; difficulties are magnified, and various arts are practiced to induce a belief that the cost of the work is much greater than it really is."² This is sound doctrine; but the door was opened later for extortionate demands.³

The early legislation authorized the sale of surplus water—the proceeds to go to the canal fund.⁴ Furthermore, the commissioners were authorized to appoint agents who were to select and purchase for the State, sites where water power was abundant in the vicinity of the canals.⁵ Individuals and towns, whose property would be benefited by the public works, were solicited for donations to the canal fund. In this way, the State came into possession of a number of acres of land and lots in various towns.⁶ These lots were sold from time to time, and the proceeds turned into the canal fund.⁷ The money derived from these sources was of small amount. Some of these donations were made on

¹ Report of Canal Committee of the House, 18th Jan., 1827, "O. C. Doc.," p. 264. Also Reports of C. C.

² C. C. Report, 10 Dec., 1825—"O. C. Doc.," pp. 188, 189.

³ Act March 4, 1836, prohibited allowances above the contract price originally agreed upon, *except where the nature of the work was such as to require a change in plan*. Similarly, Act March 29, 1837, in addition to other allowances, relief was to be given to contractors where the cost of labor was enhanced by extraordinary floods, or other causes not chargeable to the neglect of the contractors.—§ 2.

⁴ Acts Feb. 11, 1828; Feb. 18, 1830.

⁵ Acts Feb. 7, 1826; Jan. 12, 1837.

⁶ Massillon; Akron; Cleveland; Chillicothe. ⁷ See Treasurer's Reports.

condition that the canals should be built by some particular route, beneficial to the donor.¹ There was a tendency to favor towns, which had made donations, with branches to the main canal.² "Log-rolling" in Ohio was mild, however, compared with that disclosed at a later time, in a message of the Governor of Illinois, where it appears that it was the custom in that State of constructing "improvements in almost every county, and appropriating to those in which no improvements were to be made \$200,000 in lieu thereof."³ A State officer of Ohio, writing to the *National Intelligencer* in February, 1833, stated that not more than one per cent. of the money used in construction of the public works had been expended out of the State, and that it had added permanently to the State's capital. The writer numbers among the blessings flowing from the public expenditure on the canals, the fact that wages have been increased fifty per cent., and the price of provisions nearly as much.⁴

By the summer of 1827, thirty-seven miles of the Ohio Canal were opened for navigation.⁵ The arrival of the first boat at Cleveland from Akron—"having descended through forty-one locks and passed over three aqueducts"—was the occasion of another Fourth of July celebration. Tolls, in small amounts, now began to come in; and wheat, flour, butter, beef, cheese, tobacco, and whiskey found their way more easily to the eastern market. Forty-four miles of the Miami Canal were also finished. It is written: "On the 28th of November, three fine boats crowded with citizens, delighted with the novelty and interest of the occasion, left the basin six miles north of Cincinnati, and proceeded to Middletown, with the most perfect success. The progress of the boats was equal to about three miles an hour."⁶

¹ See Reports C. C.

² For charge of bribery in Legislature, in securing appropriations for private road and canal company, see 51 Niles, 304.

³ Message of 1839, quoted—57 Niles, 357.

⁴ 47 Niles, 202. The writer says further: "Our canals have been economically constructed." ⁵ Report C. C., 27 Dec., 1827—"O. Canal Doc.," p. 275.

⁶ Report C. C., 27 Dec., 1827—"O. C. Doc.," p. 282.

The Miami Canal was finished in 1829. It extended from Cincinnati to Dayton, a distance of sixty-seven miles. The Ohio Canal was finished from Cleveland to Portsmouth in 1833. Its length, including feeders, was 333 miles. The cost of the two works up to 1833 was \$5,144,539. The estimated cost had been \$5,132,065.¹

The completion of these two canals closes the first chapter in the history of internal improvements in Ohio. A debt of \$4,500,000 had been created.

Before going further with the narrative, let us look at the financing of the State stocks, and especially the means used to meet the semi-annual installments of interest. We have seen that the Act of 1825 provided for the interest in two ways: first, by appropriating the net profits of the public works; secondly, by taxation on the grand list. But though taxation was to be resorted to in preference to defaulting on the interest, it was by no means intended to raise the rates, except in case of extreme necessity. There was no point at which the popularity of the improvement system might so easily be shattered as at this point of taxation. No other subject of State finance required such delicate handling as the canal tax. Therefore, commissioners and auditors left no stone unturned in their efforts to meet that portion of interest due on State stocks, which the tolls would not pay. As early as 1820 petitions for grants of public land, to aid in constructing transportation routes, had been sent to Congress by the Ohio Legislature.² In 1825 the request was renewed.³ The State already enjoyed the benefit of the so-called "three-per-cent. fund," that is to say, the money paid by the Treasurer of the United States into the State treasury, derived from the sales of public lands within the State. Three per cent. of the proceeds of such sales had been granted

¹ Miami C. finished to Dayton 1829. See *Hunt's Merchants' Magazine*, vol. 21, p. 393. Ohio C. finished to Portsmouth, except one lock at Portsmouth, in 1833. See "Hist. of Ohio" in vol. I., Chase's Statutes.

² Resolution in House, Feb. 25, 1820. "O. Canal Doc.," p. 14.

³ Memorial June 25, 1825. "O. Canal Doc.," p. 102.

by Congress in the act enabling the people of Ohio to convene and form a State constitution, in 1802,¹ preparatory to applying for admission into the Union. The condition attached to the subsidy was that it should yearly be expended in laying out roads² within the State under direction of the officers of the State. In return for this donation, the State agreed³ to exempt from taxation lands sold by the United States for five years from date of sale. Here, then, was a fund which might be diverted from its legitimate use and applied to the payment of interest on the canal debt. The three-per-cent. fund of Indiana was so applied⁴; but though Ohio auditors occasionally looked wistfully at this fund, I can find no evidence that it was ever put to any but its proper use.⁵

The applications to Congress for grants of land were not in vain. The act, approved May 24, 1828,⁶ granted 500,000 acres of public land in Ohio to aid in the construction of canals. The same act also granted land for the exclusive benefit of the "Extension of the Miami Canal north of Dayton," in alternate sections, five miles in width on each side of the proposed extension. This grant amounted to 464,106. $\frac{153}{100}$ acres.⁷ March 2, 1827, Congress had granted to the State of Indiana land, in alternate sections five miles in width, on each side of a canal connecting the Wabash River with Lake Erie. February 1, 1834, the Legislature

¹ Seventh Cong., 1st sess., Act approved April 30, 1802.

² The original proposition of the enabling act was that five per cent. of the proceeds of public land sales within the State should be "applied to the laying out and working public roads leading from the navigable waters emptying into the Atlantic to the Ohio, to the said State, and through the same, such roads to be laid out under the authority of Congress," etc. The convention at Chillicothe, Nov. 29, 1802, modified this so that two per cent. should be expended under Congress, three per cent. by the State. Congress agreed to the change.

³ In convention at Chillicothe Nov. 29, 1802. See Chase, Stat. vol. I.

⁴ See 47 Niles, 371.

⁵ See Treasurer's Reports for use made of it. It was distributed to county auditors.

⁶ For text see "Ohio Canal Doc.," p. 319.

⁷ Vol. xxi. *Hunt's Merchant's Mag.*, p. 393.

of Indiana relinquished to Ohio her claim to any lands which, under this act of Congress, might fall within the State of Ohio on condition that Ohio would complete that portion of the proposed canal which would lie within her territory. Ohio accepted the condition,¹ and came into possession of 282,778 $\frac{60}{100}$ acres of land. These three donations of public land amounted to 1,246,885 $\frac{13}{100}$ acres.²

As soon as these lands had been granted and located the Ohio legislature took action in regard to them. They were to be sold at a minimum price of \$1.25 per acre,³ and were exempt from taxation for five years from date of sale.⁴ Somewhat later, a distinction was made between the 500,000 acres granted for canals generally and the special grants to the Miami extension and Wabash and Erie canals.

Proceeds of the 500,000 acres were to go to the sinking fund, to be applied to the payment of interest on the public debt, and to no other purpose.⁵ Proceeds of the other grants were to be used in construction.⁶ In 1838 the minimum price of these lands was placed at \$3.00 per acre.⁷ Sales of canal lands formed a considerable part of the amounts needed annually to meet the interest demand.

¹ See documents accompanying Governor's message of 1840.

21 Hunt, 394.	{	Grant of acres.	Sold up to 1848.	For
		I. 500,000	495,982.84	\$618,244.78
		II. 464,106.53	299,982.91	387,580.63
		III. 282,778.60	112,037.25	402,987.32
		1,246,885.13	908,003.00	\$1,408,812.73

The amounts received are the amounts *paid* into the Treasury, and are nearly the same as the figures for the amounts for which the land was sold, *i. e.*, but little was *unpaid* in 1848.

- I. All of the \$618,244.78 has been used to pay interest.
- II. Miami extension lands, partly chosen on line of canal, partly elsewhere, in lieu of alternate sections which had been sold by United States. In 1848 the State claimed that 20,000 acres were still due it under this grant.
- III. Wabash and Erie lands. \$22,548.70 was used to pay interest in 1838.

³ Act Feb. 12, 1829.

⁴ Act Feb. 22, 1830.

⁵ Act Feb. 23, 1830.

⁶ Act Dec. 31, 1831, and Jan. 18, 1834.

⁷ Act Mch. 19, 1838.

Nevertheless, if no other boon could be obtained, the tax rates would have to be raised. What was thought to be a boon was, however, at hand.

In different parts of the State there were large tracts of land known as the "School lands." Some of these tracts had been set apart for special purposes by Congress when Ohio formed part of the Northwest Territory.¹ The act of Congress, enabling the people of Ohio to form a constitution and apply for admission into the Union, provided that these districts should be reserved for the use of schools and such other uses as the Legislature might see fit.² In 1825 their number was somewhat increased, and they were all known as "School lands."³ They were: "Conn. Western Reserve lands," "Salt Reserve lands," "United States Military lands," "Virginia Military lands," and "Section 16" in every township. Somewhat later appear in the same category "Ministerial Sect. 24," and "University lands," located at Athens. Before the improvement mania broke out in Ohio these lands had not been productive of much revenue. They had been rented and the proceeds distributed to the different counties for school purposes. Occasionally a piece of land was sold, and a school fund thus created,—the interest on which was also distributed to the counties. In 1827, three of these school funds⁴ were loaned to the canal fund for one year⁵ and were applied to the pay-

¹ The Virginia Act of Cession of 1783, (for text, see Poore's "Charters and Constitutions," Part I., p. 428.) Reserved for officers and soldiers who had served under Col. G. R. Clarke in the war for Independence, certain lands on the northwest side of the Ohio, and (conditionally) lands on the Scioto and Miami rivers. These formed the "Va. Military lands," afterwards turned over for school purposes to the counties in which they lay. (Were the "U. S. Mil. lands incl.?"?)

² Act approved Apr. 30, 1802. (Poore's "Charters and Consti.," Part II., p. 1454.) Sect. 16 in every township, or, where that had been sold, its equivalent, was to be set apart for schools in that township. "The Scioto Salt Springs, the salt springs near the Muskingum River and in the military tract, with the sects. of land which include the same," were granted to the people at large, to be used as the legislature might direct; these too became school lands.

³ See Treasurer's and Auditor's Reports.

⁴ "U. S. Mil. fund"; "Va. Mil. fund"; "Salt Reserve fund."—See Treasurer's Report, 1827.

⁵ Act Jan. 30, 1827.

ment of interest on the canal stocks. They were promptly paid back with interest at six per cent. The same thing was done in 1828 and 1829.¹ In 1830 another² school fund was added to the number loaned to the canal fund. The laws relating to the school funds guaranteed them a six per cent. interest in case they were borrowed by the State. After a few years of tasting, the auditor's appetite for school funds was whetted.³ School lands were now sold to gratify this appetite, and a large debt of the State to the counties was rolled up. There seems to be a distinction running through all these funds. The part derived from rents, and interest paid from the canal fund, was regarded as "subject to distribution" and was paid over to the counties each year. The part derived from sales of land was regarded as "irreducible." This was the part loaned to the State and used to meet interest on State stock.⁴ This use of the school funds was a great saving to the tax-payers. So long as the interest was promptly paid the counties sustained no loss. The practice simply compelled them to invest their funds in a particular way. The amount of school funds loaned in 1827 was \$45,506.43.⁵ In 1835 the school debt was \$579,287.09, calling for an annual interest of \$34,757.22.⁶ In 1848 it was \$1,566,930.87, with an interest charge of \$88,291.11.⁷

There was still another means of meeting the interest on the canal debt before it would be necessary to raise the tax rates. This was the money obtained by premiums on the State stocks and interest on the State deposits. The pledge put forth in the Act of February 4, 1825, and

¹ Act Feb. 12, 1828.—See Treasurer's Reports.

² "Section 16."—The funds were treated in different ways. Proceeds of "Salt Reserve lands" were to be loaned to the fund commissioners, with a guaranteed annual interest of six per cent., which was to be funded annually till Jan. 1, 1835, after which it was to be distributed to the counties (act March 2, 1831). Interest due on the "Conn. Western Reserve fund" prior to Jan. 1, 1835, was to be funded to the principal (act 1835). (See also Auditor's Report, 1835.) On all other school funds interest was to be paid annually.

³ See Reports. ⁴ See Treasurer's Reports.

⁵ Treasurer's Report, 1827.

⁶ Auditor's Report, 1835.

⁷ Auditor's Report, 1848.

repeated in several subsequent acts authorizing loans, that interest would be secured by taxation, had the effect of raising high the State's credit in the money market. The first loan (of 1825) of \$400,000, to be sure, was placed at a discount of two and one half per cent. But the rate of interest on this loan was only five per cent. On the loans of 1826, '27, '28, '30 and '32, the rate was six per cent. and premiums were obtained. In 1833—the year of the completion of the Ohio canal—the “foreign debt” was \$4,500,000. In 1835, it was the same. In selling this amount of stock the premiums had been \$264,315.43, or nearly six per cent. on the amount of stock sold.¹ The last loan to obtain a premium was placed in 1838. Stock was sold to the amount of \$2,010,000,² at a premium of 9.6 per cent.

The early loans were negotiated through the agency of the Manhattan Bank of New York. The bank also paid the interest to the stockholders. The State paid the bank \$2,000 per annum for these services.³ Proceeds of loans were placed in this bank and transferred, in small amounts, as wanted, to Ohio banks—selected, apparently, at the discretion of the Fund Commissioners. The Manhattan Bank allowed the State five per cent. interest on deposits until drawn. Up to 1834, the amount received by the State from this source was \$131,468.89.⁴

To recapitulate: The means at the State's disposal to meet the interest on the debt caused by the public works before increased taxation need be had, were: 1st. The net profits of the public works—including tolls, water rents, sales of town lots, etc. 2d. Proceeds of sales of canal lands granted by Congress. 3d. The school funds. 4th. Premiums on sales of stock and interest on State deposits.

¹ For these transactions, see Auditor's Reports, also 47 Niles, 202.

² Auditor's Report, 1838. Prem. equals \$192,969.53.

³ 47 Niles, 202.

⁴ 47 Niles, 202. In 1840 the Ohio Life and Trust Co. opened an office in New York and took charge of the transfer books of the State for \$1,500 per annum.—21 Hunt, 402.

Notwithstanding these buffers between the taxpayers of the State and the impending interest charge, it was found necessary to increase taxation. The rates levied by the Auditor, for the "State and Canal Tax," through the first years of the improvement system, were as follows: 1826, 1.7 mills on the dollar; 1827, 3.2 mills; 1828, 2.8; 1829, 2.9; 1830, 3.5; 1832, 3.7; 1833, 3.2.¹ These rates seem small, yet they caused a vast amount of grumbling, and it was with great reluctance and with many explanations and apologies that auditors imposed them.² Probably they really were burdensome, as, of course, all taxes are; but the county and town made large demands also. Taxes fell heaviest on the farmers. "Town lots and buildings," and "merchants' and bankers' capital" formed but a small part of the total amount of taxable property in the State.³

Up to 1845, property was assessed at a fixed minimum value. In 1835 there was a revaluation, which increased the total amount of taxable property over 37 %, and lowered somewhat the farmers' proportion. The tax law of 1845 changed the basis of assessment from a fixed minimum value to the real value of property, increased the item of "merchants' and bankers' capital," and brought in personal property which had hitherto escaped taxation.⁴ This law went into full effect in 1847. The rates levied for "State and Canal tax" felt the change. In 1846 the rate was 7.9 mills on the dollar. In 1847 it fell to 2.7 mills.⁵

The completion of the Ohio and Miami Canals stimulated private enterprise. Canal and turnpike companies were formed, and charters obtained from the legislature. In 1832 thirteen railroads were incorporated.⁶ Of the private

¹ Figures calculated from statistics given in 21 Hunt, 408.

² See Auditor's Reports; also 57 Niles, 403.

³ See County Auditor's returns, given in State Aud. Reports.

⁴ Calculated from returns of County Aud. in State Aud. Reps. for 1834 and 1835. ⁵ 21 Hunt, 408.

⁶ Calculated from statistics in 21 Hunt, 408 (these statistics are taken from Auditor's Reports).

⁷ 21 Hunt, 399. The most important was "Mad. River and Lake Erie R. R.," from Dayton to Sandusky, 175 miles. Capital \$2,000,000. In 1849, 134 miles were completed (21 Hunt, 399).

canal companies, the most important were the "Pennsylvania and Ohio," and the "Sandy and Beaver" companies. It is beyond the limits of this paper to trace the history of these private works of internal improvement, but a brief notice may not be out of place, inasmuch as they were intimately connected with the Ohio State Canal.

High expectations were entertained in regard to these two transportation routes. The Pennsylvania and Ohio Canal, as projected, connected the State Canal at Akron, with the Pennsylvania system, extending northward from Pittsburgh, and would thus complete a direct line of communication from Cleveland to Philadelphia.¹ This line was 240 miles shorter than the line from Cleveland to New York. Furthermore, the ice left the lake at Cleveland from two and a half to three weeks earlier in the spring than it did at Buffalo.² It was thought that the advantages of the new route would be sufficient to divert the trade of the northwest from New York to Philadelphia; to build up the points of transshipment—Cleveland and Pittsburgh,—and increase the profits of the Ohio Canal and the Pennsylvania system.³ Therefore, the States of Ohio and Pennsylvania favored the enterprise. The stock was held mostly in Philadelphia. The estimated cost was \$764,372.⁴ The Sandy and Beaver Canal, from Bolivar on the Ohio Canal to Smith's Ferry, a point forty miles below Pittsburgh on the Ohio River, was also intended to furnish a short cut for east-bound freight. The estimated cost was \$1,292,465.⁵ The Pennsylvania and Ohio company was chartered in 1827, and the Sandy and Beaver company in 1828.⁶ But though incorporated so early, nothing was done on these works for a number of years. The charter of the Sandy and Beaver company was renewed March 3, 1834,⁷ and the company was given twenty years to

¹ Report C. C., Jan. 17, 1828. "O. Canal Doc., pp.," 299-303.

² 55 Niles, 84.

³ 55 Niles, 84, and 195.

⁴ Report C. C., Jan. 17, 1828, "O. C. Doc.," p. 302.

⁵ 47 Niles, 261.

⁶ Sandy and Beaver, Act Jan. 11, 1828; Pennsylvania and Ohio, Act Jan. 10, 1827.

⁷ 32 O. Local Laws, 298.

complete their canal. The charter of the Pennsylvania and Ohio was renewed in 1835,¹ and again in 1836.² By the latter act the State acquired the right to buy out the company any time within fifty years, on payment of the amount actually expended in construction and repairs after deducting net tolls, with six per cent. interest on this amount. By a law,³ to which I shall presently refer, the State subscribed one third of the capital stock of this company. In the act⁴ renewing the Sandy and Beaver company's charter, the State gave the company the privilege, for seven years, of collecting tolls due to the State on all freight passing over the State canal, *provided* such freight was then transported a distance of twenty miles on the Sandy and Beaver Canal. In 1846 the engineer of the company estimated that this State bonus would range from \$500,000 to \$1,000,000 in seven years after completion of canal.⁵ Notwithstanding this State aid the enterprises were never profitable. Owing to a lack of water supply, the country through which they passed was not suitable for building canals.⁶

There can be but little doubt that State aid tended to demoralize these companies. They felt, and rightly felt, that the State stood behind them to assist and even to take their concerns off their hands should they prove unprofitable.

¹ Feb. 20, 1835—33 O. L. L., 91.

² March 2, 1836—34 O. L. L., 223. See also pamphlet containing incorporating act and supplementary acts and reports.

³ March 24, 1837.

⁴ March 3, 1834, 32 O. L. L., 298.

⁵ Report to directors of S. and B. Canal, by engineer W. Milnor Roberts, Jan. 31, 1846, p. 18.

⁶ The Pennsylvania and Ohio Canal was completed about 1838, and the Sandy and Beaver in 1846. The building of the "Chicago, Pittsburgh, & Fort Wayne R. R." parallel to the Sandy and Beaver Canal, caused it to be abandoned in 1852. The Mahoning Railroad paralleled the Pennsylvania and Ohio Canal in 1852. The stockholders of the railroad held most of the canal stock. The railroad bought the State's interest in the canal company for \$30,000. The act of sale stipulated that the canal should be kept in a navigable condition. The railroad company put up the rates of toll so high that boats ceased to run. After some litigation, the banks were cut and the work was abandoned soon after. See 10th U. S. Census, vol. iv.; also 48 Niles, 9.

Another private canal company, which early started out with a "boom" from the charter-granting Legislature, was the "Warren County Canal company." It was a small concern—capital \$200,000, in shares of \$50 each. It was incorporated February 22, 1830.¹ In view of the supposed benefit which the construction of this canal would confer on the Miami State Canal, it was exempted from State, county, or town taxation. In 1836 the canal was not finished. The act of February 29th of that year² directed the canal commissioners to take possession for the State, finish, and make it part of the Miami Canal. The directors were to take oath to the amount actually expended by them in construction and repairs, and the State was to pay them fifty per cent. of this amount. This company affords another instance of the inefficiency resulting from mutual dependence of State and private concerns. Responsibility for good management, thus divided, could not be fixed either on the State or on the directors.

The policy of State aid to private companies was early adopted in Ohio. But up to 1837 it had been granted in each case by special charter; after 1837 it was done by general law. Hitherto it had been dealt out by retail; now it was to be given by wholesale. It is hard to conceive of a more mischievous measure than that which passed the Legislature on the 24th of March, 1837. The act provides for loans of State credit to railroad companies, and for State subscriptions to canal and turnpike companies. The section referring to railroads reads as follows:

"Every railroad company that now is or shall hereafter become duly organized, and to the capital stock of which there shall be subscribed an amount equal to two thirds of its authorized capital, or an amount equal to two thirds of the estimated cost of the road and fixtures, shall be entitled to a loan of credit from the State equal to one third of such authorized capital or equal to one third of the estimated cost of such road and fixtures, to be delivered to the company in negotiable scrip or transferable certificates of stock

¹ 28 O. L. L., 124.

² 34 O. L. L., 145.

of the State of Ohio, bearing an annual interest not exceeding six per cent., and redeemable in periods not exceeding twenty years."¹

The capital stock, real estate, tolls, and profits of a railroad company receiving such State certificates, were pledged for the payment of interest and redemption of the principal *before* the same should become due by the State. A company thus aided would go into the market and raise money on its State stock for use in construction. Now the holder of the certificates would look to the State in case the company failed on their interest. It was provided (in Sec. 6) that in case the company did so fail the State could take possession of the road.

When two thirds of the stock of a canal company, and one half that of a turnpike company should be subscribed privately, the Governor was authorized to subscribe for the State the remaining stock. To meet such subscriptions, the commissioners of the canal fund were to borrow on the credit of the State, and pay over the proceeds of such loans to the directors, in installments, as fast as the private subscriptions *should be actually paid in*. Among sundry other provisions of the act, the total amount of stock subscribed and credit loaned was not to exceed \$3,000,000 within one year from the passage of the act.

Under this law the amount of stock held by the State in private companies in 1848, was as follows: in twenty-six turnpike companies, \$1,921,675.71; in two canal companies, \$570,000; in three railroad companies, \$482,095.10; in all, \$2,973,770.81,² or sixty-five per cent. of the whole State debt as it stood in 1837,³ the year of the passage of the law. Though not all paid in, these subscriptions were made in 1837, 1838, and 1839.⁴ It will be noticed that this "loan law," as it was popularly called, was passed just as the financial storm of 1837 was beginning to break over the country. The law, very likely, had its origin in the specious prosperity of 1836. Ohio now threw overboard whatever moderation

¹ Sect. 2. ² 21 Hunt, 397. ³ Debt \$4,570,000, 21 Hunt, 402, 403.

⁴ See terms of sec. 1 act March 17, 1840.

had hitherto characterized her improvement schemes, and entered on a ruinous policy of inflation. Six great works of internal improvement by the State were projected this year, besides a few smaller ones. The great works were: the "Extension of the Miami Canal"; the "Wabash and Erie Canal"; the "Walhonding Canal"; the "Hocking Valley Canal"; the "Improvement of the Muskingum River"; and the "Western Reserve and Maumee Road." The estimated cost of all these works was \$8,577,300.64, or 1.6 times the whole State debt at the end of 1837.¹

The construction of such an extensive system of transportation routes brought on the inevitable consequences: the rolling up of an immense debt with its telling interest, lowering of State credit, and increased taxation. The resources of the present were exhausted and the future was discounted. The legislation of 1838-9² is full of acts authorizing loans for every one of these new works in amounts which made previous loans seem small. In his annual message in December, 1839, the Governor stated that the debt was over \$12,000,000, "without including more than \$2,500,000 received by the State as her portion of the surplus revenue of the United States."³ Almost all this debt bore interest at six per cent.

The first check to all this expansion came in the act of March 17, 1840, which repealed the "loan law" of 1837. I can find no indication that, up to this time, the companies benefited by the "loan law" had paid the State any return on her stock. On the contrary, the act of March 21st of this year is an indication that they did not mean to pay, but were turning all their profits into new construction. This act was an act to compel the payment of dividends. The directors of those companies which had received State aid were to take oath to the amount of revenue which had come in since receiving such aid; they were to deduct the amounts expended in necessary repairs. The balance would represent

¹ 21 Hunt, 398. Debt, \$5,240,849, 21 Hunt, 402, 403.

² Acts March 14, 1838; March 19, 1838; March 16, 1839.

³ 57 Niles, 311.

unpaid dividends. The State Auditor must then draw on this balance for the State's share. The penalties for dishonoring the Auditor's draft were \$500 and liability to prosecution by the State's Attorney. The attempt to compel payment of dividends was not altogether successful; mainly because there was but little to divide,¹ partly because the companies evaded the law. Companies in the southeastern part of the State sold the specie and "bankable paper" taken in at the toll-gates at a premium, and paid their laborers and stockholders in depreciated paper.² In 1841 the Auditor refused a dividend tendered in this depreciated paper, and commenced suit to recover the amount of the dividend in good money.³ There was much litigation in the early forties to recover dividends.⁴ Some of the companies refused to report funds which they might divide, in defiance of the law compelling payment; others appropriated such funds to the payment of old debts,⁵ which was doubtless good financial policy, but was against the terms of the law. The companies were not, however, entirely to blame for the lack of dividends. The State was tardy in payment of the promised subscriptions. In 1843 the State discharged part of her unpaid subscriptions by crediting herself with \$3,922.55 of tolls which she thought belonged to her as dividends⁶; and she closed, in this year, her subscriptions to turnpike and canal companies by a payment of domestic bonds.⁷ "The liability of the State to make indefinite loans of credit to railroads in six-per-cent. stock was compromised by releasing the State liens upon the roads and converting the sums already loaned into stock."⁸

The loan law had acted as a stimulus to speculation, reckless construction and wasteful expenditure of funds. It seems to have taken away all feeling of responsibility from directors. The public funds were poured into tubs which had no bottoms. The Auditor of the State testified, in 1839, to the abuses which it had engendered.⁹

¹ Auditor's Report, 1843.² Auditor's Report, 1841.³ *Ibid.*⁴ Auditor's Report, 1842.⁵ *Ibid.*⁶ Auditor's Report, 1843.⁷ 21 Hunt, 401.⁸ *Ibid.*⁹ Report, 1839.

The repeal of this law meant that no more funds were to be squandered on private companies. Not so of the works which the State herself had undertaken in 1837. These daughters of the horse-leech were crying "give, give." They were far from being finished, and had only just begun to yield a scanty revenue,—not nearly enough to pay the interest on the amounts already expended on them.¹

In 1840-41, additional loans, to the amount of nearly two million dollars, were authorized.² The Governor, in his message to the Legislature, Dec. 8, 1840, said that the total State debt was \$14,809,477.14, and that the acting commissioners estimated that the completion of the public works would require \$2,438,000.³

Of the works begun in 1837, the Muskingum Improvement⁴ was finished in 1840; the Hocking Valley Canal in 1843⁵; the Miami Extension in 1847.⁶ The Wabash and Erie Canal, though not finished, was put in operation in 1843,⁷ and the Walhonding Canal in the same year.⁸ In 1840, fifteen miles of the Western Reserve and Maumee Road were completed.⁹

In order that capital already sunk in these works might not be entirely wasted, it was necessary to go to the expense of completing them; but by 1840 retrenchment had begun. The State owed large sums to contractors while her ability to borrow was weakening.¹⁰ In the summer of 1839, a Zanesville paper stated that the contractors on the public works in the vicinity of that place were paid thirty-three cents on the dollar, and intimates that operations on all the public works will soon cease on account of a scarcity of money.¹¹ Of the loans authorized by the act of March 23, 1840, \$400,000 might be borrowed without restriction as to time of payment or rate of interest, in order to get funds to

¹ See tables of tolls annually filed with Auditor's Reports; also, 21 Hunt, 407.

² Acts March 23, 1840; March 29, 1841.

³ In December, 1839, the Governor, in his message, estimated that completion of public works would require \$1,500,000. 57 Niles, 311.

⁴ 21 Hunt, 398.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*, 407.

⁹ Governor's Message, 1840.

¹⁰ 21 Hunt, 399.

¹¹ 57 Niles, 16.

pay contractors sums then due them. With the exception of cases where contractors had failed to meet their engagements, and with the exception of the Wabash and Erie Canal, and Western Reserve and Maumee Road, all operations on the public works were to cease for one year.¹ The Board of Public Works was reduced to four members, and the number of engineers cut down one third. In 1841 there was a further reduction in the number of engineers.² The act of March 29th of this year, authorized a temporary loan of \$581,000, to be placed on the "best terms practicable."³ The proceeds of this loan were to pay contractors; and no money should be expended on the public works until they had been paid. Old contracts should be carried through, but no new contracts should be let during the year,⁴ with the exception, again, of the Wabash and Erie Canal and Western Reserve and Maumee Road.

The Fund Commissioners found it impossible to sell the proposed stock either in New York or London, but there were two banks in Ohio, the Chillicothe Bank, and the Franklin Bank of Columbus, whose charters would expire in 1843. A bargain was therefore made with these banks. They were to advance the needed temporary loans in their own paper, and to receive therefor six-per-cent. State stock. In return for this accommodation, their charters were to be renewed.⁵ Further temporary loans were made in Ohio and New York.⁶ Still, not enough funds were obtained by these measures. An act was passed in March, 1842, authorizing the issue of as much six-per-cent. foreign stock as would realize \$500,000, with the pledge of the State that no more foreign stock should be issued.⁷ Issues of domestic stock were authorized, a portion of it based on Wabash and Erie, and Miami Extension Canal

¹ Until April 1, 1841.

² Act March 29, 1841, § 4. I. Curwen's Statutes, 793.

³ I. Curwen, 797.

⁴ "Until the close of the session of the next General Assembly."

⁵ 21 Hunt, 399.

⁶ From Bank of Wooster, \$129,355.70 in pledge of stock; in New York, \$275,000; of Baring Bros., \$133,200.

⁷ 21 Hunt, 399.

lands.¹ The fruits of this law seem to have been only the issue of "faith and credit" bonds as they were called, and canal land bonds,—in all \$350,081.05.² They were given to contractors in part payment of the sums due them. During the year they were at a discount of thirty to fifty per cent.³

Notwithstanding the pledge of the State that no more foreign stock should be issued, at an extra session of the Legislature in 1842, the Fund Commissioners were authorized to go again into the foreign market. They sold \$1,546,800 of bonds at an average discount of 33.6 per cent.⁴ This relieved present necessities; but the completion of the public works would still require a million and a half. In 1843 this amount was authorized. The stock was to become due in 1851. The rate was raised to seven per cent. and the stock sold at par. It was taken in Wall Street, and was to be paid for in two installments, in May and September,⁵ in *Ohio funds*. Now Ohio funds in New York were at a discount of two and one half per cent.⁶ The State's share of the surplus revenue of 1837 was pledged for the payment of this stock. With the proceeds of this loan final payments were made to contractors of the sums due them.⁷

The inability of the State to pay her contractors and laborers in 1842 caused great distress among them. The Auditor of the State visited the public works in that year and said, in his annual report, that prevailing reports of suffering did not exaggerate it; that it was scarcely possible to exaggerate it.

The result of the inflation policy of 1837 was not merely to bring the State to the verge of bankruptcy, but to cause corruption and extravagance in building the public works. Two quotations from the Auditor's Report for 1843 may suffice to show this. The Auditor is speaking of the Miami and Miami Extension canals. He says: "I can-

¹ \$1,300,000 authorized; \$300,000 on Wabash and Erie lands; \$200,000 on Miami Extension lands. 21 Hunt, 399.

² Auditors Report, 1842.

³ *Ibid.*

⁴ 21 Hunt, 401.

⁵ \$600,000 in May; \$900,000 in September.

⁶ 21 Hunt, 401.

⁷ 21 Hunt, 401.

not shut my eyes to the fact . . . that there are too many officers and retainers, too much of a spirit of favoritism, and want of strict and rigid economy and accountability in these two works." Again: "That there has been, however, an inordinate and almost profligate expenditure of public money upon the Wabash and Erie and Miami Extension canals, no one who looks at the cost of the works can doubt."

With the issue of the seven-per-cent. stock, in 1843, the debt caused by the public works practically reached its high-water mark. For a few years there were issues and cancellations of domestic stock, based on canal lands, but in small amounts, and they did not affect the bulk of the debt. In 1843 the debt stood as follows:

Foreign loans payable in New York, . . .	\$16,395,212.00
Domestic bonds payable in Columbus, . . .	866,841.65
Including:	
1. Faith and Credit bonds,	
2. Miami Extension bonds,	
3. Wabash and Erie bonds,	
4. Turnpike bonds,	
5. Bonds for completing Miami extension,	
School debt	1,406,267.46
Total debt	\$18,668,321.11
In 1850 there matured, of 5% stock, \$400,000	
" " " 6% " 4,018,658	
" " " 7% " 1,500,000	
Total	\$5,918,658 ¹

The act of March 21, 1849, authorized the Fund Commissioners to fund the five-per-cent. and six-per-cent. stocks and bonds, about to become due, into stocks of the same denomination due in 1860. The surplus revenue of 1837, due to the State from the counties in 1850, was to be used to pay the million and a half of seven per cents.²

The constitution of 1851³ provided for a sinking fund for the payment of the interest on the debt and redemption of

¹ Auditor's Report, 1843.

² 21 Hunt, 401.

³ Article VIII., Sec. 7.

the principal as it should become due. The fund was to consist of the net annual income of the public works, and such other resources as might be provided by law; and, if these were not enough, money raised by taxation. A minimum of \$100,000 must annually be raised for this fund and compounded annually at six-per-cent. interest.

In 1854 the foreign debt was \$14,917,000.¹⁷

" 1857 " " " " 13,730,566.79.

" 1880 " " " " 6,476,805.00.¹

Though often embarrassed for funds, Ohio never defaulted on the interest due on the loans contracted for internal improvements. The interest on her domestic bonds was also promptly paid. Owing to an obscurity in the Auditor's and Treasurer's reports, I am unable to say whether the interest due the school funds, borrowed by the State, was, at all times, promptly and fully paid. Up to 1830 it was paid each year in full; in 1839 and the following years it was so paid; between 1830 and 1839, there were yearly payments of interest, nearly, if not quite equal to the amounts due. The school funds did not, therefore, suffer by being loaned to the State. In one of the Auditor's reports, however, occurs the statement that school *lands* were being sold far below their real value.

The average annual gross profits on all the public works, from 1833 to 1848 inclusive, yielded not quite 3.1 per cent. on the cost of construction.² On somewhat incomplete returns, it appears that the average annual dividend paid the State by private companies, from 1840 to 1848 inclusive, represented only a little over $\frac{2}{10}$ of 1 per cent. on the State stock.³

As business enterprises, therefore, both the public works and the private concerns aided by the State were failures.

¹ Jan. 1st of each year. Figures from 10th U. S. Census, vol. 7.

² Cost = \$15,022,503, total gross profits = \$7,409,708.52, average annual gross profit = \$463,106.78. 21 Hunt, 407.

³ The incompleteness consists in an inability to get figures for the amounts of stock held by State *each year*, on which dividends were due. I have taken amount held in 1848. It was sometimes greater, sometimes less, than this amount. The average annual amount would not, probably, differ much from the amount held in 1848. Stock held in 1848 = \$2,973,770.81; total dividends 1840-1848, \$256,055.99.—Auditor's Reports.

STATISTICS OF THE PUBLIC WORKS OF OHIO.

Names of Canals.	Points Connected.	Built.		Length Miles.	Width Feet.		Depth Feet.	Locks (Feet).				Cost of Construction.
		Begun.	Com- pleted.		Top.	Bot.		No.	Length.	Width.	Rise and Fall.	
Ohio.	Cleveland—Portsmouth.	1825	1835	33	40	26	4	150	90	15	1207	\$4,695,202
Miami.	Cincinnati—Dayton.	1825	1835	67	50-60	5	5	93	87-99	15	907	1,020,000
Miami Extension.	Dayton—Defiance.	1837	1847		50-60	5	5					3,168,965
Wabash and Erie.	Ind. State line—Toledo.	1837	1843		50-60	5	5					2,955,269
Walhonding.	Rochester—Roscoe.	1837	1843	25	40	4	4	11	90	15	90	607,369
Hocking.	Carroll—Nelsonville.	1837	1843	42	40	4	4	26	87	15	203	947,670
Muskingum Impr.	Zanesville—Marietta.	1837	1840	75				12			126	1,628,028
Sandy and Beaver.	Bolivar—Smith's Ferry.	1834	1846	84								\$2,000,000 Original cost
												Abandoned in 1852.
Penn. and Ohio.	Akron—Penn. State line.		1838	87								\$420,000 shortly after 1852.
Athens Branch.	Nelsonville—Athens.			14								Originally private; taken by State, 1836.
Lebanon Branch.	Middletown—Lebanon.			20								217,000

These statistics are taken from Vols. 4 and 7 Tenth U. S. Census, supplemented by statistics from 21 Hunt, 398 and 407. Canals below the line are those abandoned by 1880; those above were running in 1880. The Sandy and Beaver and Penn. and Ohio were *private* works. Penn. and Ohio was also known as the "Mahoning Canal," and the Lebanon branch as the "Warren County Canal." The "Western Reserve and Maumee Road" was another State work. The "National Road," from Wheeling to Columbus, was never properly a State work, as it was built by Congress and turned over to the State. The tolls did not suffice to keep it in repair. (See Auditor's Reports.) [The date of completion of the *Ohio*, and *Miami* canals, and their cost of construction differ from dates and figures given in text of paper. Dates and cost in the table are both from Tenth U. S. Census, Vol. 7 (Hist. Ohio Debt). For dates and figures given in text, authority is cited in text.]

LIST OF AUTHORITIES.

- I. General Laws of Ohio :—1825-'41.
- II. Local Laws of Ohio :—1825-'41.
- III. State Treasurer's Reports :—1827-'30 ; 1832-'35 ; 1837-'48.
- IV. State Auditor's Reports (same years).
 The Auditor's Reports contain annual returns from the *County* auditors, in tabular form, of the amounts, classes, etc., of taxable property on grand levy, and the *later* reports contain reports of the Fund Commissioners and Board of Public Works, amount of tolls on public works, etc.
- V. "Ohio Canal Documents" : An official history of the public works during their earlier period, containing :
 - (1) Canal Commissioners' Reports, 1823-'28.
 - (2) Canal Fund Commissioners' Reports, 1825-'27.
 - (3) Extracts from Gov. Messages, 1823-'27.
 - (4) Legislative Committee's Reports, 1825-'28.
 - (5) Civil Engineer's reports, 1822-'28.
 - (6) Sundry letters from one of the C. C. to Dewitt Clinton and others in New York, and their replies.
 - (7) Resolutions from Ohio Assembly to U. S. Cong., and an act of Cong. granting land to Ohio for canals (approved May 24, 1828).
- VI. Miscellaneous Public Documents :
 - (1) Gov. Message, 1840, and accompanying letter about canal lands.
 - (2) Penn. and Ohio Canal Co.'s Charter, and other Acts of Legislature. Reports of the Co. to Ohio Legislature, 1828, '33, '34.
 - (3) Sandy and Beaver Canal Co.'s Report to Stockholders (meeting of 1844) ; also Report of Co.'s Engineer to Directors, 1846.
- VII. Niles' *Weekly Register*, vols. 47-73 (1834-'48). (Vols. Sept., 1834,-March, 1840, were examined page by page ; after that, by index.)
- VIII. Hunt's *Merchants' Magazine*, vols. 1-5, 8-13, 20-27 (1839-'52).
- IX. *The Bankers' Magazine and State Financial Register*, vols. 1-9 (1846-'55).
- X. Tenth U. S. Census Report :
 - (1) Vol. 7 (History of State Debts).
 - (2) Vol. 4, On Transportation.
- XI. Internal Commerce Report, for 1879, '80, '81, and '82.
- XII. Report of Senate Committee on Transportation to Seaboard, vol. I., p. 67 *et seq.* ; vol. II., p. 537 *et seq.*

THE OLD FEDERAL COURT OF APPEAL



THE OLD FEDERAL COURT OF APPEAL.

By Professor J. FRANKLIN JAMESON, of Brown University.

[Before reading his paper, Mr. Jameson briefly referred to the pamphlet upon the same subject, written by the Honorable J. C. Bancroft Davis, reporter of the Supreme Court of the United States, and privately printed a short time before. The text of his paper, somewhat abridged, is as follows:]

It is frequently, and indeed very justly, signalized as one of the capital defects of the Articles of Confederation and of our federal system in all the years preceding the year 1789, that it provided no federal judiciary of extensive scope. But it is well to remember that the federal government was not wholly without judicial functions and organs during those years. In the first place, Congress could hardly avoid being called upon to pronounce in disputes of boundary and jurisdiction between States, and the Articles of Confederation provided an especial process, by which Congress was to determine both these disputes, and such as concerned the private right of soil claimed under different grants of two or more States.¹

Decidedly more important than this occasional tribunal was the old federal Court of Appeal in Cases of Capture, and the committee which preceded it. That court, the one permanent judicial body which the Confederation maintained, is now well-nigh forgotten by most persons. It seems worth while to call it again into remembrance, for two reasons. In the first place, it is well to do all we can to set in clear light the antecedents of important American institutions. The most important of them are too often conceived of as having been without antecedents, as having

¹ It seems to me plain that the process here alluded to was modelled on that provided by Mr. Grenville's famous Act of 1770 for the trial of disputed elections to the House of Commons.

been instantly called into existence by the creative fiat of great statesmen. But here, as in France, we shall come to perceive that the year 1789 did not make a complete break in institutional history. Although the most august and powerful tribunal in the world has derived little of its splendor from its obscure and feeble predecessor, it is well for us to know that it had a predecessor, and that the life of that predecessor did something toward making possible the creation of a comprehensive federal judiciary. In the second place, the history of the committees for appeals, and of the permanent Court of Appeals, which eventually took their place, casts light upon the character of the Confederation, and illustrates its weakness in a less familiar aspect.

The outbreak of the Revolution was marked by a great extension of privateering. This occasioned many prize cases. At the same time the vice-admiralty courts were rapidly destroyed by the Revolution. The paralysis of the former prize courts made it necessary to provide a substitute. The necessity was of course first felt in Massachusetts, where an act was passed on November 1, 1775, which provided for three courts, to be held at different places in Massachusetts, and to have cognizance of captures. The journals of the Continental Congress show, and Judge Davis has interestingly brought out the point, that the first suggestion of a federal court for such purposes came from General Washington. Writing to the President of Congress from the camp at Cambridge on the 11th of November, he says, after referring to the Massachusetts act, of which he encloses a copy :

"As the armed vessels, fitted out at the Continental expense, do not come under this law, I would have it submitted to the consideration of Congress, to point out a more summary way of proceeding, to determine the property and mode of condemnation of such prizes, as have been or hereafter may be made, than is specified in this act.

"Should not a court be established, by authority of Congress, to take cognizance of prizes made by the Continental vessels? . . . "

It is to be observed, that Washington makes here no suggestion of an *appellate* court. In pursuance of his

recommendations, Congress, on November 25th, adopted a series of seven resolutions, dealing with the subject of maritime captures. Among other matters, they embraced a recommendation to the legislatures of the several colonies to erect courts, in which cases of capture might be tried by jury. The sixth resolution, relating to federal cognizance of such cases, was as follows:

6, "That in all cases an appeal shall be allowed to the Congress, or such person or persons as they shall appoint for the trial of appeals, provided the appeal be demanded within five days after definitive sentence, and such appeal be lodged with the secretary of Congress within forty days afterwards, and provided the party appealing shall give security to prosecute the said appeal to effect, . . . "

Washington, who had repeated his suggestion to Congress, wrote on hearing of their action: "The resolves relative to captures made by Continental armed vessels only want a court established for trial to make them complete. This, I hope, will be soon done, as I have taken the liberty to urge it often to the Congress."

This desire of the commander-in-chief was not fulfilled, as we shall see, until a considerably later time. Meanwhile, the recommendation of Congress respecting colonial admiralty courts was soon acted on by several of the colonies, and eventually all had such courts. As the Revolution went on, and the spirit of '76 declined, the jealousies of States toward the federal government increased in this, as in other particulars, and their legislation, in respect to appeals from their own prize courts, was marked by evident effort to curtail the powers more generously conceded at the outset.

The first appeal which came before Congress from any of these State prize courts was the case of the prize schooner *Thistle*, which was brought before Congress on August 5, 1776, on appeal from the admiralty court of Philadelphia. This case was soon referred to a special committee, whose report, reversing the decision of the State court, was approved by Congress. After seven cases had been in this manner adjudicated by committees specially appointed in each instance, Congress, on January 30, 1777, appointed a

standing committee of five to hear and determine appeals in prize causes. It was this committee, the membership of which was frequently changed, that decided such appeals during the ensuing three years.

It was not until more than five years had elapsed since Gen. Washington's recommendation, that a regular court was erected. How is this preference for trial by committee to be explained? Mainly, in all probability, by a doubt whether the powers of the federal government extended so far. But as this doubt was in the end overcome, I venture to adduce, in further explanation of the maintenance of the procedure by committee, the example of the appellate prize courts of England. The organization of the courts to which, as colonists, they had been accustomed to see prize cases carried on appeal from the colonial vice-admiralty courts may fairly be supposed to have been in the minds of members of Congress when providing an appellate tribunal for the prize courts of the States. After 1708, all appeals from the vice-admiralty courts of the colonies went directly to the lords commissioners of appeal in prize causes. The commission included all the privy councillors by name, but virtually the tribunal was a judicial committee of the privy council. The Congressional committee seems to have transacted its business in much the same way as its English analogue.

The erection of a regular appellate court for prize cases seemed for a long time to depend on the fate of the Articles of Confederation (in which Congress had been given the power to erect such a court) until the complications arising out of one famous case made evident the need of a permanent tribunal invested with greater power and prestige, and caused it to be established some time before the Articles of Confederation were completely ratified. That case was the case of the sloop *Active*, a case which for thirty years had continued to disturb the relations between Pennsylvania and the United States. Gideon Olmstead and three other citizens of Connecticut, on board the British sloop *Active*, rose against the master and crew, and took command of the

sloop; but before they could reach port, were captured by a Pennsylvanian armed brig, which took the *Active* into Philadelphia, and claimed it as prize. Olmstead and others made a counter-claim to the whole. The State court of admiralty adjudged them only one fourth. They appealed to the federal commissioners of appeal, who, on December 15, 1778, reversed the sentence of the State court, and gave judgment in favor of Olmstead and his companions. In spite of this decision, and of an injunction subsequently granted, the judge of the State court of admiralty, declaring himself unable to disregard the verdict of a jury, ordered its marshal to sell the ship and cargo, and to bring the proceeds of the sale into court, and this was done. The authority of the United States was thus entirely set at naught. Thereupon the commissioners declared that they would not proceed further in the affair, nor hear any appeal, until their authority was so settled as to give full efficacy to their decrees and process. They also took steps toward laying the proceedings before Congress.

The commissioners' report to Congress was successively referred to two committees, and much debated. The resolutions finally adopted on March 6, 1779, with no dissenting voice but that of Pennsylvania, affirmed the right of the Committee of Appeals to examine into decisions on facts as well as decisions on the law; declared that Congress, being invested with the supreme sovereign power of war and peace, and the power of executing the law of nations, must have in prize cases a control by appeal over both judges and juries, as otherwise Congress could not give satisfaction to the complaints of foreign nations, and concluded that the committee in the case of the *Active* had competent jurisdiction to make a final decree, and that therefore their decree ought to be executed.

Meanwhile public attention had been strongly drawn to the inadequacy of the system. In the report of the committee of Congress a paragraph not embodied in the resolution had read: "Your Committee beg leave to suggest that, in the prosecution of the Enquiries referred to then,

they have discovered some Imperfections in the present system of marine Judicature, and to recommend to the Congress that the same be revised." This same spring, Spanish remonstrances on the capture of two Spanish ships by Massachusetts privateers compelled Congress to recommend to the States a more liberal concession of appeals to Congress, and Massachusetts and New Hampshire, with jealous niggardliness, passed acts conceding appeals in cases where subjects of friendly powers were claimants. Moreover, in May there came a strong appeal from Philadelphia itself, in the form of a petition signed by many of its chief citizens, and forwarded with approval by the council of Pennsylvania. After commending the establishment of a privateering system and of State admiralty courts by Congressional recommendation, the petition names, as one of the chief reasons why privateering enterprise, at first so ardent, had lately declined, the composition of the federal appellate tribunal. The constant change of judges, they asserted, made impossible the establishment of fixed principles. Composed of members of Congress, the court could never sit in any other place than where Congress resided. Hence came uncertainty, delay, and expense in proceedings before it, and a consequent reluctance to engage in privateering. They therefore begged Congress to constitute a permanent tribunal for appeals in prize causes.

Under the pressure applied in the several ways described Congress slowly moved toward definite action. In December an ordinance for establishing such a court was finally reported. It provided that there should be three judges, any two of whom might hold court; that they should have the powers of a court of record in fining and imprisoning for contempt and disobedience; that the court should proceed in accordance with the usage of nations, and not by form of trial by jury; that the State admiralty courts should execute its decrees; that it should sit at Philadelphia first, and afterward elsewhere, if not farther eastward than Hartford, nor farther southward than Williamsburgh; that it might appoint a register and a marshal; that appeals should

be limited in time, as heretofore; that a duty of one per cent. of the appraised value of all prizes coming before the court be paid into the Continental treasury, out of which sum each judge should receive a salary of 30,000 dollars per annum; and that the States should be recommended to pass laws requiring their courts of admiralty to execute this court's decrees, and to decide prize cases without a jury.

On the 15th of January, 1780, the resolutions establishing the court, permitting it to appoint a register, enjoining the observance of the law of nations, and arranging the places of sessions, were adopted. The others were not, but an advance of 12,000 dollars of salary was provided for. On the 22d of January Congress chose, as the three judges of the court, George Wythe, of Virginia; William Paca, of Maryland; and Titus Hosmer, of Connecticut; and eleven days later, adopted a form of commission. Writing to the judges elect on February 1st, Samuel Huntington, President of Congress, after informing each of his election and salary, says:

"I hope the Business may not employ so much of your time as to interfere with your other Engagements, and deprive the public of your Service in this important Station, as it may be in the power of the Court to state the Time of their Session convenient for themselves, without Injury to the Public."

Chancellor Wythe having declined, Congress, on April 28th, chose Cyrus Griffin, of Virginia, in his stead. Messrs. Hosmer and Paca accepted, but Mr. Hosmer died in August. On May 5th resolutions were brought in, looking to the transference of all prize appeals to the new court, and providing the necessary oaths. In the original resolutions the tribunal was entitled "The High Court of Appeals in Maritime Causes." But the ordinance which was finally passed effecting the transference styles it "The Court of Appeals in Cases of Capture." Judge Davis computes that "65 cases in all were submitted to the Committees of Congress, of which 49 were decided by them, 4 seem to have disappeared, and 12 went over to the Court of Appeals for decision";

and that "57 cases in all, including the 12 which went over, were submitted to the Court of Appeals, and all were disposed of." Eight more of its cases are reported in 2 Dallas. Four of these were decided by Judges Griffin and Paca in 1781 and 1782. In November, 1782, Mr. Paca, on becoming governor of Maryland, resigned his judgeship; and on December 5th, George Read, of Delaware, and John Lowell, of Massachusetts, were associated to Mr. Griffin as judges. Meantime, the Articles of Confederation having been fully ratified, a detailed draft of an ordinance for the regulation of the court had been reported to Congress in June, 1781, re-committed in July, and again reported on March 30, 1782.

Such was the leisurely habit of Congress. It was ordered that the next Tuesday be assigned for the second reading. But the Journals of Congress seem to contain no further record of the ordinance. In the absence of such record of the exact form in which it finally passed, an interest attaches to the information which George Read's brother sent him from Philadelphia, while his nomination was being talked of. "The salary," he writes, "is six hundred pounds per annum, and he [Fitzsimons] said it would not require above six or eight weeks at most in the year to perform all the duties. There are three stated sessions annually,—viz., one at Hartford, Connecticut, and at this place, and one in Virginia, but it is very seldom there is business to occasion all these meetings." Again, in response to further inquiries, he writes: "I am told the judges are paid as part of the civil list; all which, I am told, receive pretty regular quarterly payments." The salaries had been fixed at \$2,250 in September, 1780.

It is obviously impossible to discuss the various cases decided by the court, though two of them were afterward important as cases in the United States Supreme Court, the cases of *Penhallow v. Doane* and *Jennings v. Carson*. The business of the court dwindled after the conclusion of the war, (though Hamilton, as we might have expected, made an especial effort to keep it alive), and at the end of their May session in 1784, and again in December, the judges

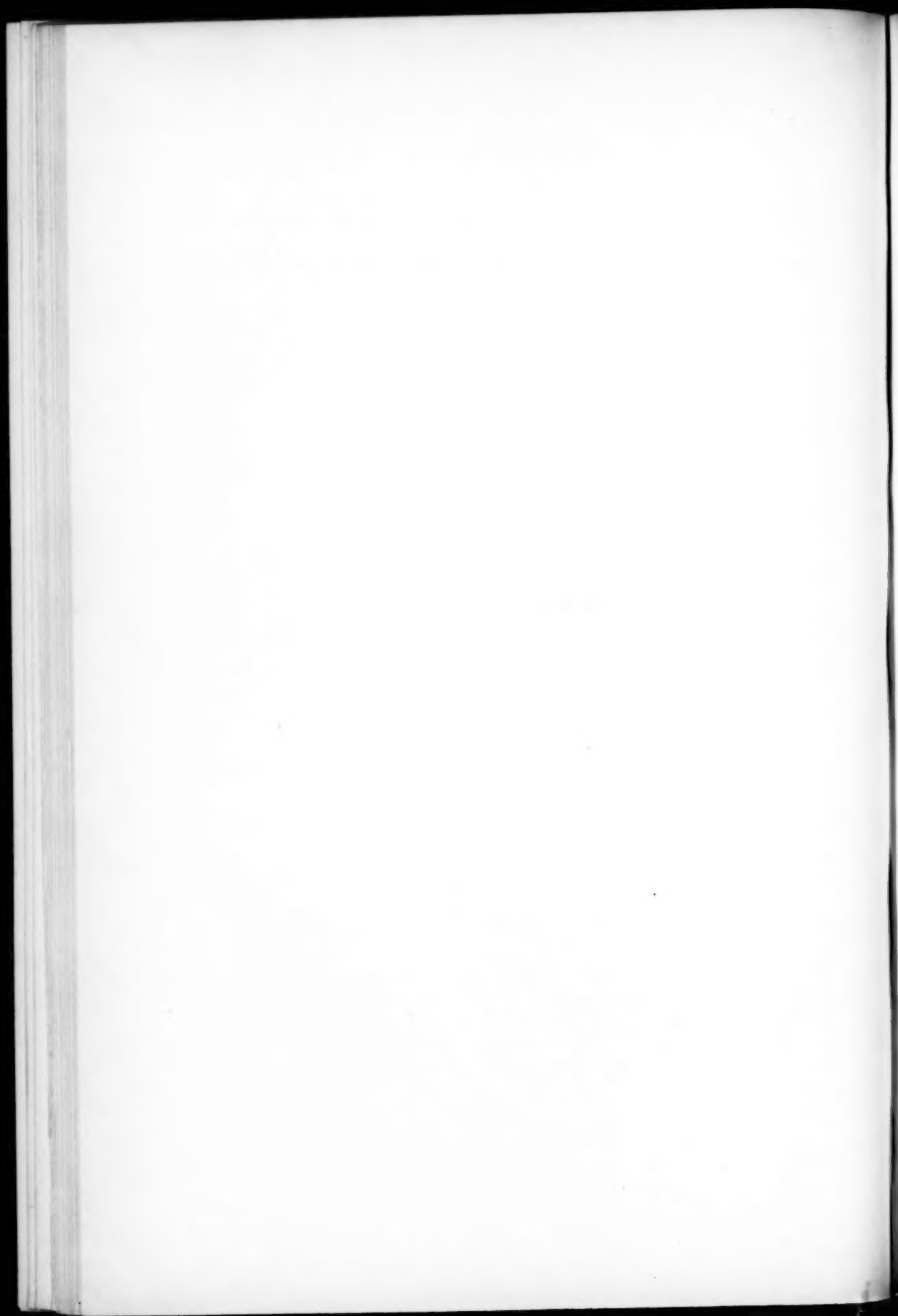
informed Congress that all the cases submitted to them had been disposed of. In January, 1785, Mr. Griffin wrote expressing his hope that they would not be dismissed without some expression from Congress of approbation of their official conduct.

The remainder of the history of the court is characteristic of the Confederation. The December letter was reported upon on July 1st, when the report was recommitted, but the salaries of the judges were stopped. Secretary Thomson communicated this resolution to the judges. Judge Griffin intimated to Mr. Read that "a little party business had predominated in the affair," and remonstrated in January, 1786; and Congress in February passed a resolution expressing their sense of the ability, fidelity, and attention of the judges, and explaining their curt action of the preceding summer. In June, 1786, Congress finding new business arisen, authorized and directed the judges to sustain appeals and grant re-hearings and new trials, voted them ten dollars a day during session and travel to and from it, and directed them to assemble for transaction of such business at New York in November. Mr. Read wrote to the secretary requesting a postponement to December, as he wished to go from the Annapolis Convention to the session of the Delaware legislature, and Mr. Griffin wished to go to that of Virginia.

The secretary replied that they must come, as notice had been spread abroad. A session occurred at New York in November, another in April, and another, the last session of the court, at Philadelphia in May, 1787. Two days before its final adjournment, the memorable convention met, which provided the United States with a more comprehensive and a more effective judiciary. We cannot doubt that the Court of Appeals in Cases of Capture, though, as remarked by counsel in *Jennings v. Carson*, "unpopular in those States which were attached to trial by jury," had an educative influence in bringing the people of the United States to consent to the establishment of such a judiciary. It could hardly be that 118 cases, though all in one restricted branch

of judicature, should be brought by appeal from State courts to a federal tribunal, without familiarizing the public mind with the complete idea of a superior judicature exercised by federal courts. The Court of Appeals in Cases of Capture may therefore be justly regarded not simply as the predecessor, but as one of the origins, of the Supreme Court of the United States.

CANADIAN ARCHIVES



CANADIAN ARCHIVES.

By DOUGLAS BRYMNER, Dominion Archivist.

When I strongly desired to come to this meeting, I had no other intention than to be a listener, to place myself at the feet of historical Gamaliels, from whom I might receive lessons that would be of use in the prosecution of the work with which I have been entrusted. You, Mr. President, however, having asked me to prepare a paper on "Canadian Archives," I felt constrained to yield, thus losing the advantage which all silent men possess—of being thought wise when they are otherwise.

The functions of the archivist are not the same as those of the librarian; neither can he be called a historian. He collects the documents from which history is to be written, and must, therefore, have a sufficient knowledge of the works that exist treating not only of the subjects with which he has to deal, but also of others which have, at first sight, a very slight and indirect bearing on them. As an archivist he has to collect the rough material to be formed into structures of exquisite beauty in the hands of the skilful workman, or to be raised by the dishonest and incompetent into unsubstantial erections, which crumble into ruins before the first rude blast of adverse criticism.

The more clearly does the archivist feel this distinction between him and the historian, the more useful is his work likely to be. If he seeks to obtain reputation as a historian, by so much will his proper duties be encroached on. He must not forget that he is only the pioneer, whose duty is to clear away obstructions; the cultivated fields will follow.

But you, Mr. President, did not ask me to trouble you with commonplaces. You wished me to tell you something about the growth and progress of the collection of Canadian

archives, of which you have spoken so kindly on various occasions, and have again referred to in your Inaugural address.

Many of our Canadian records have been, unfortunately, destroyed by fire on various occasions. The peripatetic system, under which the seat of government was removed at intervals from one town to another in the original Canadas, acted, during its continuance, as a bar to the systematic collection of records. Subsequently the division of powers, by which the control of lands, education, etc., was given to the legislatures of the Provinces composing the Dominion, deprived the Federal Government of the records relating to many most important subjects. There was no systematic collection of records when, in 1871, a very numerous signed petition was presented to the three branches of Parliament, praying that steps should be taken to have the material relating to the history of the country collected and arranged for reference. On a joint report from the Senate and the House of Commons, Parliament assigned to the Minister of Agriculture, who is also Minister of Arts and Statistics, the duty of accomplishing the object the petitioners had in view. I had the honour of being selected to organise the new branch of the Civil Service, and in June, 1872, was furnished with three empty rooms and very vague instructions.

The first step was naturally to make a preliminary survey of the work to be done. Fortunately, steps had been taken by Dr. Taché, the Deputy Minister of Agriculture, to have a large collection of military correspondence, which had been stored at Halifax for transmission to London, retained there, till the result of an application for the transfer of these papers to the Dominion Government could be known, the application having been made in anticipation of the appointment of an archivist, provided for by Parliament, but not then made. On my appointment I proceeded to Halifax, where I examined and reported on the papers, but the negotiation dragged on, there seeming to be little room to hope for a satisfactory result.

In 1872, the preliminary examination was confined to the Capitals of the different Provinces, at each of which I spent some time, and in 1873 I went to London, where I visited the various Government offices, the British Museum, every place, in fact, that I thought would throw light on the work I was appointed to organise. I then recommended, as a first instalment, that the collections made by General Haldimand, Governor of Canada during the United States Revolutionary War, should be copied. These had been presented to the British Museum in 1857 by his nephew, Mr. William Haldimand. Two collections were presented by that gentleman. The one known as the "Haldimand Collection" relates to the events of that officer's career on this continent; the other—the "Bouquet Collection"—deals more especially with the military operations of Bouquet, the general outlines of which are known to historians. The documents in this latter collection cover a period of ten years, from 1754 to 1764, those for the year 1765, which form part of it, relating chiefly to the administration of Bouquet's estate. The collection is in thirty volumes.

The period covered by the Haldimand Collection is the most obscure in Canadian history, and the correspondence throws a flood of light not only on events in Canada of that epoch, but on contemporary events in what were known as the American Colonies, whilst they still formed part of the British Empire, and during the Revolutionary War, from the first muttering of discontent, immediately after the cession of Canada, to the attainment of independence twenty years later. The information contained in these papers relates to an immense extent of territory. On the Ohio; the Mississippi; the Illinois; the Wabash; in the Floridas; on the Lakes from Superior and Huron eastward; in the frontier posts to the north and south; Michillimakinak, Detroit, and Niagara; on Lake Ontario, with its fortified posts on the mainland and islands; on both sides of the St. Lawrence above and below Montreal to the Gulph and onwards to Nova Scotia; on the Richelieu, Lake Champlain, the Mohawk valley, the Hudson. In fact, there is

scarcely a locality bordering on, approaching to, or whose interests might affect the fortunes of Canada, respecting which there are not more or less minute details to be found in this mass of correspondence, which fills no less than 232 volumes, and covers a period of thirty-three years of public service.

The writers who treat of the period during which Haldimand was Governor and Commander-in-chief had little opportunity of testing the truth of the charges brought against him by those who were detected in a conspiracy and imprisoned for the safety of the Province; nor does much regard appear to have been paid to the peculiar circumstances in which he was placed from the time he succeeded Carleton in 1778 to the date of his recall in 1784. I must confess, that I have derived from the study of the correspondence a high idea of the abilities of Haldimand, and of the moderation he showed in the exercise of almost unlimited power at so critical a period, when a calm and sober judgment was needed to restrain passion and to enforce repression without having recourse to violence.

Before leaving London in 1873, I made arrangements for copying the documents contained in these two collections. In arranging for this work, it was proposed, in order to lessen the cost, to have only a careful selection made and copied. My own view was, that no man could tell what documents might or might not be safely omitted, even the most trifling being a link in the chain of evidence, as every investigator knows. On this point I may be pardoned for quoting the words of a recent writer on Egyptian antiquities. He says: "No object has been deemed too trivial for examination. The relations of one monarch to another have been found on scraps of vases, chips of wood, and fragments of papyri. A mutilated hieroglyph on the dress of a statue has revealed a political mystery, and a series of erasures on granite blocks, a religious revelation." A curious instance of the correctness of the statement just quoted is to be found in the proof afforded by a contract for the sale of a piece of land, recorded on a tablet now in the British

Museum, of the existence of a King of Babylon twenty-five centuries ago, which was suspected but not proved. The Minister of Agriculture, the Hon. John Henry Pope, saw the propriety of my recommendation and gave the necessary authority to have the collections copied in full.

But whilst engaged in the work of investigation, that of acquisition was not neglected. By personal negotiation with the authorities at the War Office, for which the previous correspondence had prepared the way, I succeeded in convincing them that the collection of correspondence at Halifax would be more useful at Ottawa than immured in the vaults in London, and by the end of the year 1873, fully eight tons of official documents were brought from Halifax and deposited in their original cases in the Archive rooms.

Those familiar with the subject know the formidable character of the work of arranging and classifying such a mass of documents. The papers were secured in cases, each containing correspondence for one or more years, tied up in bundles. An attempt had been made to indicate the subjects by titles, but there had been no effort to arrange them according to any sort of systematic classification. Each title, of which there were 82,000, covered a variable number of enclosures. I have in round figures estimated the documents at 300,000 (given by a typographical error in one of my reports as 200,000), but I think that an actual count would show them to be about 400,000, probably more.

The first thing to be determined on was the system of arrangement to be adopted. I have said that I was turned loose into three empty rooms. I had now a mass of unsorted documents to deal with. Being entirely alone, I had full scope to adopt any system I chose, without let, hindrance, or remonstrance. First, then, I adopted, as the foundation, the chronological order, so that the record of events might follow naturally, no matter who was the recorder. Next, as in dealing with these documents, it would be impossible to have them indexed, even imperfectly, for years, the most practicable way would be to divide

them into subjects, breaking them up, as it were, into fragments for mastication. In much of the correspondence this was comparatively easy, from the general official rule (not always, however, observed) of treating only one subject in each letter. There are numerous exceptions to this. The Queen's father, the Duke of Kent, who was in command in North America, was one of the greatest offenders, his letters dealing at great length with all sorts of subjects, whilst the Duke of York, commander-in-chief, Her Majesty's uncle, deals with one subject at a time, and one only. They had one peculiarity in common. Each had a secretary who wrote a beautifully clear hand, a characteristic also of the royal brothers, as, in fact, of most of the gentlemen at the end of the last and beginning of the present century.

Having decided on the first principle of arrangement, namely, that it was to be chronological—I proceeded with that, in the first place, by means of tin boxes, each with four pigeon holes. These I had arranged round the four walls of one of the rooms, and by taking a limited number of years, I was able to get the letters, returns, accounts, memorials, &c., arranged by years, months, and finally days of the month. It should be borne in mind, that the documents were of many shapes and sizes, from a scrap of paper of possibly quarter of an inch, to the largest size of paper made, and the writing and ink from the rudest and poorest up to the most cultured and the finest that could be produced. Let me remark, too, that in the earlier documents each of the covering letters had endorsed the name of the writer, the place where and the date when written, and a short but clear abstract of its contents. Gradually as time wore on, these careful notes ceased; the abstracts first became obscure and then vanished, only the date being endorsed. Much of the trouble of ascertaining the subject of the earlier documents was removed by their careful endorsement, but that advantage was lost by the modern and imperfect practice.

The next matter to be attended to was the choice of subjects and titles.

The first part of the work had been purely mechanical, the arrangement of documents according to dates requiring no special qualifications beyond industry and patience. The next, however, demanded a little more brain power in order to determine the subjects and their titles, and to select the documents that should properly belong to each subject. It is clear that the latter could only be done by reading the documents; it is equally clear that to wade through each of a mass of papers, between three hundred thousand and half a million in number, meant a work of many years. But here training on the press came into play. The work of rushing daily through files of exchanges to select the most interesting material for the making up of the next day's paper is in itself a training for work of this kind. Like the medicine prescribed by the Greek physician Douban to the leprous King of Persia, which was absorbed by exercise, as told in the veritable Arabian Nights, the contents of the documents seemed to be absorbed rather than taken in by any slower process, and thus the work went on from day to day. I may express, parenthetically, my thankfulness that, rapidly as the work was done, I find in indexing that few errors were committed in the arrangement. The documents were then bound, the work proceeding like that on Solomon's Temple, "neither hammer, nor axe, nor any tool of iron was heard while the house was building." In other words, I kept every thing as quiet as possible, until some progress had been made in the work of collecting and arranging.

The collection of which I now speak covers a period from about 1785 to 1870. It largely relates to military affairs in the Provinces, including the preparations to meet anticipated hostilities consequent on the first French Revolution; original reports of the events of the War of 1812; the strained relations between Great Britain and the United States for some years previous to the declaration of war; the rebellion in Canada in 1837-8, with the proceedings of the sympathisers from the United States. Then there are reports of expeditions to the Northwest; many most im-

portant details respecting the Indians from about 1788; documents relating to the construction of the Canals by the Imperial Government; very complete reports of the proceedings in Canada of the Royal Engineers; details of the defensive posts and fortifications; much interesting information respecting the chief cities and new settlements, including those formed from the weaver population of Scotland, ruined by the introduction of the power loom, and who, it may be noted, made most successful settlers. The division with the title "Settlers" includes also a collection of the original correspondence with the exiled French Royalists who, after the massacre of Quiberou and the suppression of the struggle in La Vendée and Brittany, entered into negotiations with the British Government for a grant of land in Upper Canada. They began an establishment about thirty miles north of Toronto, but the situation was ill-chosen and the settlers unsuited for the rough work of clearing, so that the scheme collapsed, and the leader, the Count de Puisaye, died in poverty in London. In addition to the original documents relating to this last subject, I had copies made in London of other correspondence, which makes the information on this attempt at settlement fairly complete. It may be said that almost every thing relating to local subjects coming within the jurisdiction of the military commanders is to be found here, besides much that is of a civil character. There is, however, little of political history. That information has to be sought for elsewhere, and the gap in that respect is being rapidly filled up.

This collection being complete, I have distinguished it as Series C. To facilitate research, I had an index placed in each volume. At first I thought of limiting the index to the names of the writers and recipients of letters, to memorialists and subjects, but finally resolved to grapple with the task of indexing every name of every person and place mentioned, together with such subjects as could be briefly stated. To do more was hopeless. By this time the copies of the Haldimand and Bouquet Collections were

beginning to arrive. These I had arranged to have bound in London, after revision, so that they could be placed on shelves on arrival. As a relaxation from the drudgery of indexing, I took to making abstracts of these, specimens of which are to be found in the annual reports on Canadian Archives since (and including) 1884. In making these abstracts, I had a double end in view: one, to make the documents readily accessible; the other, to make a thorough revision of the copies, so as to make certain they were exact transcripts. Lists were made of all doubtful points, which I transmitted to the revisers in London for further examination. By this process, I believe as exact copies have been secured as it is possible to obtain in transcribed documents. It is scarcely necessary to say, that I have insisted on the copies containing every peculiarity of spelling, every error, and that no variation in these or in any other respect is allowed.

In addition to the larger and more general collections, a considerable number of original warrants for the payment of officials, clergy, schoolmasters, pensioners, and others, besides accounts relating to the Lake Marine, to the Indian and other departments was added. These also I arranged and had bound in 197 volumes. They are fully indexed, and have been found to be of great service in the settlement of questions in dispute. Then there have been smaller lots, constantly added to, consisting of family papers, including such documents as original accounts and journals of the Invasion of Canada in 1775, correspondence relating to the War of 1812, Indian treaties, early settlements, and many of a purely local nature. These are bound, but not yet indexed; all received are arranged and bound immediately after their reception.

As it seemed an obvious duty to gather up the scattered threads of the occupation by the French of a large portion of North America, copies were procured of the old Acadian registers, so far as these were obtainable. That work has been going on since, so far as pecuniary means would allow. Copies of many of the church registers of the old French

settlements in the West have also been obtained and are now on the shelves.

The report on Archives for 1882, to which I beg to refer, shows the extent of the ground to be covered, if the Archives are to be in any degree of use to the Dominion as a whole, instead of degenerating into a merely local collection of documents. I therefore conceived it to be absolutely necessary to set about the work of collecting, as at least a beginning, the printed journals, sessional papers, departmental reports, &c., of all the Provinces. The attempt to obtain the earliest of these records has been fairly successful. The gathering of them as they are issued; the securing of pamphlets, new and old, even of fly sheets, has been carefully attended to. In several cases, the early Provincial records in printed form are much more complete than those in the libraries of the Provincial Legislatures.

In 1881, I obtained the services of one clerical assistant. That year I went to London to make arrangements for completing the copying of all the documents relating to Canada in the British Museum. As the report for 1881 contains all that is of importance concerning that visit, I think it only necessary to say further, that in dealing with the question of the grant to Sir William Alexander, the Lord Stirling so well known in connection with Nova Scotia, I was not satisfied with the papers relating to that Province, but obtained also a considerable number of documents concerning New England, the entanglement of Lord Stirling's affairs with those of Gorges and Mason appearing to render that necessary.

If I have been too prolix in entering into these details, I must apologise for taking up the time of a meeting like this. It has been done partly to show that no really good work of this kind springs into being suddenly; that it is a process requiring time and labour, but that the difficulties of forming such a collection are not insuperable. Patience is needed, above all watchfulness and perseverance. The man entrusted with the work must make up his mind that it is to be accomplished, and undertake it, not as a heavy task,

but as something to rouse his faculties. Nor is the expense deadly. There has never been a sum of more than \$6,000 annually voted by Parliament for this service. It requires great economy in management; it is not always sufficient, but any excess of expenditure beyond the grant is speedily checked.

I shall be very brief in what remains. In 1883, I returned to London and obtained from the Imperial Government much more favourable conditions for transcribing the State papers, than the rules in force allowed, many restrictions being removed, which were found to impede the work.

In July, 1883, Mr. Joseph Marmette was appointed assistant Archivist, and entered on the work of investigation in Paris. I would refer you to the reports for 1883, 1885, 1886 and 1887, for Mr. Marmette's account of the documents in Paris, which I feel sure will be found interesting. We are ready to begin the work of copying there, when Parliament shall see fit to grant a sufficient amount for the purpose. What I did that year in London, for the time I could be spared from duty in Canada, is to be seen in the report for 1883. I spent some weeks in Paris, and was, I think, fortunate in securing a number of valuable historical works.

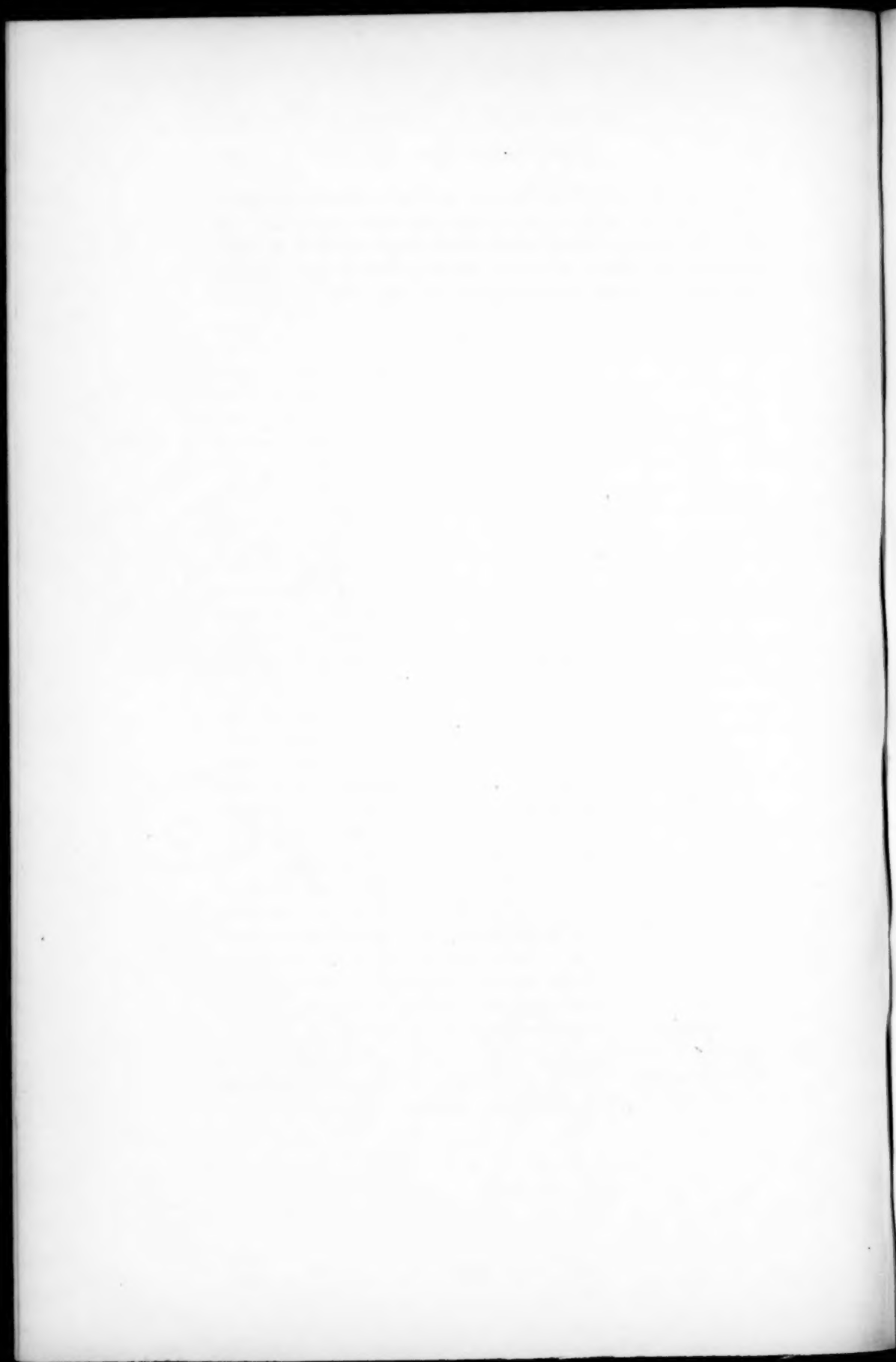
Besides the works specially mentioned, we have on the shelves the British State papers of the series bearing the title "America and West Indies," from 1755, the first year of the final struggle for supremacy on this Continent between Britain and France. These papers include the operations in Nova Scotia, the siege and capture of Louisbourg, the campaigns in Canada till the conclusion of the war. It is very desirable to begin the copying of that portion of this series which relates to Nova Scotia and the Maritime Provinces generally, but fortunately the intelligent and careful labour of Dr. T. B. Akins, the Archivist of Nova Scotia, renders delay less prejudicial than it would otherwise be. His work has been admirably done. The "Colonial Series" of the State papers begins in 1760, continuing, so far as the old Province of Quebec is concerned, till 1791,

when it is parted into two streams by the formation of the two Provinces of Lower and Upper Canada. When that point was reached, I had the staff of copyists divided, half taking Lower and half Upper Canada, so that the papers relating to each might be received concurrently. That work is carried on steadily, with a competent staff of copyists.

We have, also, a variety of family papers of various periods; numerous documents relating to the refugee loyalists, inaccessible to Sabine and others who have hitherto written on that subject; copies of old parish registers from Acadia and the lower St. Lawrence, from the Illinois, Detroit, &c., besides notarial registers, originals and copies from the latter named place. More of these registers would have been copied had means permitted. There are miscellaneous documents of general interest, as well as those local to Canada; a very valuable collection of printed historical works and pamphlets old and new; county histories, manuscript and printed, and, as I have already said, original accounts of many of the early settlements; the valuable collection of the publications of the Public Record Office, London, numbering now upwards of 400 volumes, which I was fortunate enough to obtain as a gift from the British Government. The new volumes of these are sent as issued, besides the important and valuable reports of the Historical Manuscripts Commission, which is bringing to light the treasures hitherto concealed in the muniment rooms of the old British families.

My ambition aims at the establishment of a great storehouse of the history of the Colonies and Colonists in their political, ecclesiastical, industrial, domestic, in a word, in every aspect of their lives as communities. Included in this should be the history of the old French regime in Acadia, Canada, Louisiana, and to the westward; of all the British Colonies in America from their beginning down at least to 1796, when the last of the frontier posts were transferred to the United States. The fortunes of all were so intertwined that it is impossible to separate the records of them without injury. It may be a dream, but it is a noble dream! It has

often spurred me to renewed effort, when the daily drudgery—for it is drudgery—was telling on mind and body. It might be accomplished, and Ottawa might become on this continent the Mecca to which historical investigators would turn their eyes and direct their steps. But who is sufficient for the task?



THE STATES'-RIGHTS CONFLICT OVER THE
PUBLIC LANDS

THE STATES'-RIGHTS CONFLICT OVER THE PUBLIC LANDS.

BY JAMES C. WELLING, LL.D., President of the Columbian University.

Ever since the human race, in the evolution of political society, passed from the stage of clan government to that of government based on territorial occupation, questions about land, as the seat and symbol of political power, have formed the grounds of ultimate civil debate among men. Questions of land, whether arising from the impacts of population under the pressure of a conscious or unconscious Malthusianism, or whether arising from motives of pure and simple political aggrandizement, have arrayed continent against continent, people against people within the bounds of the same continent, and state against state within the bounds of the same confederation. The inter-continental proportions of this great secular conflict may be seen to-day in the eagles of war and diplomacy gathering around the carcase of Africa in the wake of the vultures formerly drawn by the ravin of the slave trade. The desolating wars waged for the establishment and maintenance of a balance of power in Europe illustrate the sway of the same principle among the great states comprised within the bounds of that continent. The chronic conflict between the states of the Germanic confederation, a conflict brought to an end, in some of its acuter symptoms, on the field of Sadowa, and the bitter feud which so long obtained between the slaveholding and non-slaveholding States of the American Union, a feud brought to an end at Appomattox, in Virginia, in the year 1865, will suffice to illustrate the tremendous pressure of this same principle within the bounds of the two

greatest confederations of the modern world. It is to some of the salient features of "Land Politics" in the United States that the present inquiry will be directed.

The conflict over the public lands of the United States has been essentially a States'-rights conflict in point both of substance and of form. The roots of the conflict are deeply planted in the colonial history of the country. The American colonies, at the outbreak of the Revolutionary war, had not learned to love one another, or even to live together on terms of good neighborhood. The points of political difference between them were better defined than their points of political unity. They differed from each other in the nature of the charters by which they were held and administered. And these administrative differences were aggravated by a difference in the social and economic institutions of the several provinces. The Eastern colonies were democratic in their social tissue, being chiefly composed of moderate freeholders. The Southern colonies had but few moderate freeholders, and were dominated by a planting aristocracy, in whom the possession of slaves had generated the virtues and faults of feudalism, as described by Burke—a spirit of freedom fortified by the haughtiness of domination. The population of the Middle colonies partook of a blended character compounded from both of these elements. These discriminations were distinctly recognized in the political literature contemporaneous with the formation of the Constitution, and, as just stated, are almost textually cited from a well-known pamphlet of Richard Henry Lee.¹

But the distinction which more than any other imperilled the formation of our political union at the outbreak of the Revolutionary war was a distinction based on a difference in the territorial claims of the several colonies as organized by the Continental Congress for the maintenance of American independence. Several of the States comprised in the Union had definite and circumscribed boundaries. Others had indefinite and uncircumscribed boundaries stretching

¹ See Ford's "Pamphlets on the Constitution," p. 296.

westward to the South Seas. By the "landless" States it was maintained that the unoccupied western territory, wrested from the British crown by the joint exertions of the States united, should enure, in reason, justice, and right, to the benefit of the United States. The landless States differed, however, among themselves in defining the terms on which the public lands should be held for the usufruct of the Confederation—all of them except Maryland holding that they should be used simply for the fiscal benefit of the Union, while the political jurisdiction should continue to vest in the States to which this vast domain was nominally and severally attached. Maryland, with a clearer insight into the conditions of the problem which Congress was called to solve, insisted that the political jurisdiction of the territory should be ceded to the Union, in common with the land itself, and that the said territory should be subsequently parcelled out into free and independent States for admission into the Union. The great "landed" States of Massachusetts, Connecticut, New York, and Virginia scouted for a time this arrogant pretension of the "landless" States. In the successive stages and phases of this controversy the States'-rights conflict over the public lands came to a sharp definition. It was more and more accentuated, until at last the Maryland view prevailed. The great landed States, with a few reservations not needing to be recited in this general view, made a cession of their lands, with political jurisdiction annexed, to the government of the United States.

The political watershed of American history is to be found in this supreme determination of the territorial question presented to the American people in the interval from 1776 to 1781 and 1782. It is the "Great Divide" which has determined all the political strategy of subsequent times in regard to the disposition of the public lands. The dispute on this subject was so sharp, and the contumacy of Maryland against the pretensions of the landed States was so persistent, that it was not until 1781 that she signed the Articles of Confederation and completed the formal bond

of the Union.¹ The Revolutionary war had meanwhile been lasting five years. The country was already in sight of the peace which came in 1783 to crown the struggle for independence. But the conflict over the public lands, instead of being appeased after 1781, was only the more definitely brought into the lists prepared for the joust and tourney of contending sections. Virginia, the most commanding of all the States in point of territorial possessions, had not yet completed her cession. Maryland, in spite of her long delay, had simply yielded her assent to the Articles of Confederation in the faith and hope that the example set by New York would be speedily followed by all the landed States. Long before her, New Jersey had acceded to the Union with the premise that she did so in the hope and expectation that the landed States would ultimately respond to the call of patriotism in this matter.

And after this controversy had wellnigh imperilled the formation of the Union, it returned to vex the negotiations connected with the conclusion of peace. It was a States'-rights conflict over the public lands which prevented, for a time, any agreement in the Continental Congress as to the terms on which peace should be concluded. Indeed, the question was distinctly presented and discussed, whether, on the cessation of hostilities with Great Britain, it might not become necessary for the landless states, with the power of the Union at their backs, so far as they could wield it, to take the State of Virginia in hand and reduce her to submission in the matter of her landed pretensions. Threats of civil war and portents of civil war were freely bandied about at that crisis on the floor of the Continental Congress. Persons are still living—the writer is one of them—who witnessed that remarkable scene on the floor of the United States Senate when, in 1856, the Hon. Benjamin F. Wade, of Ohio, naturally incensed at an expressed approval of the assault made upon Senator Sumner, openly challenged the Southern Senators then and there to the ordeal of

¹ H. B. Adams, "Maryland's Influence upon Land Cessions to the United States."

mortal combat. Extraordinary as that defiance was, even on the eve of an armed conflict for the political possession of the Territories, it was but the loud reverberation of a similar challenge uttered over the public lands in 1782, when, as in 1856, some men were eager for the fray, while others were seeking just as eagerly to put off the evil day of military conflict over this burning question. As this prologue to the swelling scenes of our land politics at a later day is not so familiarly known in our annals, it may be well to reproduce some of its most striking notes.

It was while a hot discussion was pending in the Continental Congress as to the terms on which peace should be concluded with Great Britain, that this whole controversy between the "landed" and the "landless" States witnessed a sharp recrudescence. The representatives of the landless States were not eager for a peace which should enure to the special benefit of the landed States, by leaving them in the possession of a vast domain acquired by the common blood and treasure of all the States. The representatives of the landed States were not eager for a peace which should enure to the special benefit of the Union at their expense. In support of the former view, a special emphasis was laid by its advocates on the moral rights of the landless States and the moral rights of the Union, as against the technical rights of the landed States. In support of the latter view, a special emphasis was laid by its advocates on the reserved and sovereign rights of States as against those who would fain strip the landed States of possessions admitted to belong to them before the war, and of possessions which had not been surrendered by the Articles of Confederation. The pure and simple terms of this conflict over the public lands in 1782 will distinctly appear from the following *résumé* of the debate which was had at that period over this topic:

John Rutledge, of South Carolina, on the 8th of August, 1782, said that he did not enter into the war for himself or for those inhabiting the lands on the waters falling into the Atlantic, but for posterity—for those who would hereafter inhabit the country beyond the mountains, to the extent

formerly claimed by the Crown of Great Britain as belonging to these thirteen States. He would continue the war forever rather than be circumscribed in narrower bounds.¹

John Witherspoon, of New Jersey, held that the fixing of the boundaries among the State could not be made an ultimatum to the satisfaction of all the States; that the happiness of the people on this side of the Alleghany Mountains was a sufficient object to induce them to enter into the war; that some of the States had their boundaries fixed and determined; that the State he had the honor to represent was one of them; that it had not entered into the war, nor would it, he believed, be willing to continue it for the sake of boundless claims of wild, uncultivated country, more especially as it was a matter of dispute, and would undoubtedly occasion much contention among the States as to whom the country, if ceded, would of right belong.

Mr. Telfair, of Georgia, "was for fixing our boundaries to the Mississippi. As to our claims beyond that to the South Sea, he would leave them to discretion."

In the formal "Statement of Facts and Observations" drawn up by a Committee of the Continental Congress, in 1782, to support the territorial claims of certain States and of the United States (for the instruction and guidance of our negotiators in concluding a Treaty of Peace with Great Britain, which should also be a Treaty of Boundaries and Limits), the following doctrines were laid down:

"1. That the territorial rights of the thirteen United States, while in the character of British colonies, were the same with those defined in the instructions given to Mr. J. Adams on the — day of August, 1779.

"2. That the United States, considered as independent sovereignties, have succeeded to those rights, or [and it was on this 'or' that the whole onus of the controversy turned,

"3. That if the vacant lands cannot be demanded upon the precedings grounds, that is, upon the titles of the individual States, they can be deemed to have been the prop-

¹ Thomson Papers: N. Y. Historical Society Collections for 1878, p. 100 *et seq.*

erty of his Britannic Majesty immediately before the Revolution, and to be now devolved upon the United States *collectively taken*." ¹

This third head is explicated in the body of the report as follows: "The character in which the king was seized was that of king of the thirteen colonies collectively taken. Being stripped of this character, its rights descended to the United States for the following reasons: 1. The United States are to be considered in many respects as an undivided independent nation, inheriting those rights which the king of Great Britain enjoyed as not appertaining to any particular State while *he* was, what *they* are now, the superintending governor of the whole. 2. The king of Great Britain has been dethroned as king of the United States by the joint efforts of the whole. 3. The very country in question hath been conquered through the means of the common labor of the United States." ²

The reading of this third clause, as thus expounded in three dimensions, was interrupted by a stern and peremptory protest from the great landed State of Virginia.

Mr. Bland, of that State, moved that the third clause be expunged. The motion was seconded by Arthur Lee. A long debate ensued. The members from States of which the boundaries were fixed and circumscribed defended the retention of the clause. The members from States which claimed territory to the Mississippi or the South Sea, as well as the members from States whose eastern boundary was undefined, opposed the retention of the clause. Mr. Madison avowed his willingness to retain the clause for the sake of public policy. He said that the clause had been imported into the discussion for the purpose of reconciling all the States to the Report, but at the same time he expressed the opinion that "there was no solid foundation in the argument." Yet he said that he saw plainly "if the clause was struck out, sundry States would object to the rest of the Report, and therefore he was for its standing." With a view, however, to the concealment of the differences

¹ The Thomson Papers, pp. 115, 116.

² *Ibid.*, p. 139.

of opinion which obtained on this topic, he thought it improper that any vote should be taken on the pending question.

Mr. Bland, however, insisted that a vote should be taken, and this brought Arthur Lee to his feet for the defence of the Virginian position. He argued that the supposition on which this third clause proceeded was groundless, and that the reasoning by which it was sought to defend the clause was fallacious. He contended that the claim to the western territory rested solely on the titles of the individual States, and that the Congress had no authority but what it derived from the States. The States, he said, were individually sovereign and independent, and upon them devolved the rights of the crown within their respective territories. Could the sovereignty of the crown of Great Britain, he enquired, devolve on the United States in Congress assembled before such an assembly existed? If only after such an assembly had existed under the Articles of Confederation, it would still remain to inquire whence is the sovereignty of the United States derived? Is it in the Confederation? Is it in the Treaty of Alliance with France? Does it really exist?¹

John Witherspoon, of New Jersey, advocated in this debate the extremest *National* view in opposition to the extreme *States'-rights* view championed by Arthur Lee. He said:

"The several States are known to the powers of Europe only as one Nation under the style and title of the United States. This Nation is known to be settled along the coasts to a certain extent. If any European power were admitted to establish colonies or settlements behind them, what security could they have for the enjoyment of peace? What a source," he exclaimed, "of future wars!"

¹ Recalling, besides, an old antagonism between himself and Franklin in the matter of the competing land-jobs known as those of the Ohio Company and the Walpole Grant, Lee objected to Franklin as one of the negotiators of peace, because Franklin was understood to be interested in western lands, and had, therefore, a personal interest in supporting the jurisdiction of the United States as against that of Virginia. The Thomson Papers, p. 143.

Whether the uncultivated territory belonged to one State or the other, was, he said, a matter of no concern to the European powers, but they could all see the importance of the question to the general security of the United States, and the principle could therefore be a valuable one as a makeweight in the conduct of negotiations for peace.

The antagonism on this question was too wide and deep to be bridged over by any compromise of opinions. The landed States would not yield their reserved rights. The landless States would not yield their national claims and pretensions. And, as the delegates from Virginia refused to practise the prudent *ménagement* recommended by Madison, it only remained to submit the question to the ordeal of a yea and nay vote.

Yet if the question were brought to such a definite issue, it was seen that the dissidence would reveal a split running through the ranks of the States embattled for the maintenance of their independence, and would reveal a damaging scission precisely at the moment when it was most necessary that they should present an undivided front in order to insure advantageous terms in the negotiations for peace. It was, we see, a States'-rights conflict over the public lands, which, for a time, imperilled the conclusion of a Treaty of Peace with Great Britain in 1782. As the bitter feud between the two classes of States could not be adjusted by any consensus of opinions, it only remained that for the present they should agree to disagree on the point in controversy. It was moved and carried that the whole report should be recommitted. The States'-rights conflict over the public lands was simply postponed.

This discordancy in the Continental Congress between the defenders of States'-rights and the upholders of national rights in the matter of the public lands, came still more prominently to the front on the 27th of August, 1782. On that day a petition was presented in Congress, signed by a number of inhabitants of "a tract of country called Kentucky." The petitioners alleged that they had taken an oath of allegiance to the United States; that they consid-

ered themselves subjects of the United States, and not of Virginia; that the charter under which Virginia claimed that country, had been dissolved; that in consequence of this dissolution, the country had reverted to the crown of Great Britain, and that by virtue of the Revolution the right of the Crown devolved on the United States. Therefore they prayed the Congress to erect them into a separate and independent State, and admit them into the Federal Union.¹

Arthur Lee, of Virginia, openly proclaimed that to countenance such a petition as that was to insult Virginia. Accordingly he moved that the petition be not received, but that it be referred to Virginia herself.

James Madison seconded the motion. He said: "As to the supposition that the right of the Crown devolved on the United States, it was so extravagant that it could not enter into the thought of any man. If the right of soil devolved, why not the right to the quit-rents and confiscated estates?"

Mr. Williamson, of North Carolina, thought the question raised between the States and the government was a very serious one, and that whenever it was discussed it would be attended with most serious consequences, and he apprehended that the sword alone could decide it. He wished it might be put off a very long time, and not be reviewed in their time, nor in the time of their children, or their grandchildren.²

Mr. McKean, of Delaware, was sensible that it *was* a question of a very serious nature, but he thought that it *must* be discussed. He was not for putting off the discussion to so distant a day. He was not for leaving it to posterity. He was willing to face it with all its consequences, and hoped it would be decided before the present war was concluded. If the people of "Kentuckey" had taken an oath of allegiance to the United States, he avowed a willingness to take them by the hand. He was not afraid of Virginia. He hoped no State in the Union would ever be so great as

¹ The Thomson Papers, p. 145.

² *Ibidem*, p. 147.

to give laws to all the rest, and that none would be suffered to acquire so much power that the others could not control it.

Mr. Clark, of New Jersey, wanted to be informed more particularly respecting the conduct and views of Virginia with regard to the western country. . . . He understood that the Virginians had it in contemplation to form the western country into distinct subordinate governments, and to send out lieutenant-governors to rule them. This would be going on the plan of Great Britain with regard to her former colonies, and must bring on another revolution, which will be attended with convulsion, and break the peace of the Union.

Mr. Howell, of Rhode Island, maintained that the right of granting western lands now devolved on the United States.

Mr. Witherspoon replied specifically to the argument of Madison. He said that it certainly could enter into the thoughts of men that the rights of the crown had devolved on the United States, because it had entered into his thoughts, into the thoughts of the petitioners from Kentucky, and into the thoughts of very many sensible men at the beginning of the present controversy. The western uncultivated lands had early been spoken of as a fund for discharging the debts that might be contracted in the war by the United States. "It would appear a strange whim," said the New Jersey delegate, with genuine Scotch pleasantry, "if a sentiment which occupied and engrossed the minds not only of speculative but of illiterate men, of the bulk of the inhabitants of many of the States, had no solid foundation to rest on. For his part, he thought it founded on truth, on justice, on the nature of things, and was warranted by the laws of society. This controversy was begun and the war was carried on by the united and joint efforts of the thirteen States. By their joint exertions, and not by those of any one State, the dominion of Great Britain was broken, and consequently the rights claimed and exercised by the crown devolved on all, and not on any indi-

vidual State. Why should one State reap more advantage than another? . . . With regard to the powers of Congress, or of the United States collectively taken, they could not be exactly defined in the Articles of Confederation. Cases would arise for which no previous provision could be made. These came under and were decided by the great law of necessity, which was admitted as a law of nations. It might happen that a State would grow so powerful and so ambitious as to be dangerous to the other States in the Union. In such a case the law of necessity and of self-preservation might compel the others by a sovereign act of authority to abridge the power of that State, and even to divide it into two or more distinct and independent States."¹

It will thus be seen that the forcible reduction and even the violent partition of States were matters of public discussion in our Federal Legislature more than eighty years before another States'-rights conflict over the public lands resulted in the military reduction of the Confederate States, and in the partition of the very State around which this battle of words was waged in 1782. The States'-rights conflict is older than the Constitution. It found a forum in the Continental Congress, as well as in that which afterwards met in Washington. "There is no place," wrote Abraham Baldwin, of Georgia, to Charles Thomson, under date of February 4, 1786, "where the clashing of State interests is so strongly marked as on the floor of [the Continental] Congress."²

After the States'-rights conflict over the public lands had imperilled the formation of the Federal Union and the conclusion of peace with Great Britain, another phase of the same conflict returned to imperil the possession of the Mississippi valley. Spain was naturally angered by the stipulations of a secret article which had been inserted in our Treaty of Peace with England for the circumscription of her territorial claims southward and westward on the North American continent. "Castilian grandees went to bed and

¹ *Ibidem*, pp. 145-150.

² *Ibidem*, p. 204.

dreamed of invincible armadas," says John Fiske. "Congress was promptly informed that until this affair should be set right the Americans need not expect the Spanish government to make any treaty of commerce with them; and, furthermore, let no American sloop or barge dare to show itself on the Mississippi below the Yazoo, under penalty of confiscation. When these threats were heard in America, there was great excitement everywhere, but it assumed opposite phases in the North and in the South. The merchants of New York and Boston cared little more about the Mississippi River than about Timbuctoo, but they were extremely anxious to see a commercial treaty concluded with Spain. On the other hand, the backwoodsmen of Kentucky and the State of Franklin cared nothing for the trade on the ocean, but they would not sit still while their corn and their pork were confiscated on the way to New Orleans. The people of Virginia sympathized with the backwoodsmen, but her great statesmen realized the importance of both interests and the danger of a conflict between them."¹

Such were the elements of this new States'-rights conflict over public lands not yet reduced under our national authority. The new political cotillon reveals an entire change of partners in the contra-dance. The extreme States'-rights emphasized by Virginia in 1782 for the assertion of her separate and individual claims are now emphasized in behalf of the rights not only of her sister States in the South and of the future States of the Southwest, but also in behalf of Federal rights accruing to the benefit of the common Union and newly placed under the safeguard of the Treaty of Peace with England. The commercial States of the North and East are now found ready to sacrifice the political interests of the Southern States and the economical interests of the whole Union in the Mississippi valley, with a view to the speediest possible reestablishment of their own commercial prosperity, which had been blasted by the war. It was insisted by the Spanish envoy that the United States

¹ John Fiske, "The Critical Period of American History," p. 209.

should renounce the right to navigate the Mississippi below the Yazoo as the condition of procuring a commercial treaty. John Jay, the Foreign Secretary, recommended such a renunciation for the term of twenty-five years. The seven States of Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, New Jersey, and Pennsylvania—all Northern States—voted for the untoward measure against the earnest opposition of all the Southern States then represented in Congress—Maryland, Virginia, North Carolina, South Carolina, and Georgia. The measure was discussed in secret session. The mouths of the Southern delegates were gagged by the Northern majority, in spite of the vehement protests uttered by Grayson, of Virginia, and by his colleagues, who argued that such a surrender was a breach of the national covenant made with Virginia when she ceded her "back lands," because it would lower the value of those lands in the market; because it would postpone indefinitely the formation of new States which were to be carved out of them; because it deprived the Western and the Southern States of a natural right vouchsafed to them by the physical geography of the country; and, finally, because it operated a virtual dismemberment of the Union by permanently fixing the weight of population on the northern side of the continent.

A question of order was raised by the Southern delegates on constitutional grounds against a motion which proposed to compass a reversal of the instructions previously given to the Secretary of State in the matter of the Spanish treaty. The Articles of Confederation required the concurrence of nine States to establish regulations for the conclusion of a treaty, and the previous instructions had been given by this constitutional majority. But it was now proposed to repeal these instructions by the vote of less than a constitutional majority in such cases. In spite of this remonstrance the Northern States adhered to their determination.

No injunction of secrecy could keep a proposition so important as this from reaching the ears of the Southern

people. The Legislature of Virginia protested against it in tones at once "loud and deep." Indignation meetings were held in the South and Southwest. New Jersey countermanded the action of her delegates. Pennsylvania began to waver in her policy on the subject. And though a few delegates from the Eastern States, like Gorham, of Massachusetts, were still frank enough to avow that the shutting of the Mississippi would be advantageous to the Atlantic States, and that therefore they wished to see it shut, the illiberal sentiment was openly denounced by Madison as being "in strong contrast with the principles of the Revolution and with the language of American patriots." The hapless measure was finally allowed to perish by pure inanition, for the want of support from its Eastern and Western parents. Even Jay, its foster-father, with a candor which does him honor, was brought to disown this changeling offspring of a distempered time. But Gardoqui, the Spanish Minister, was fain to recognize at the time that the proposition had probably received its death-blow from Virginia.¹ We are therefore called to thank this "Mother of States," not only for the great Northwestern territory which she ceded to the Union and helped to dedicate to freedom, but also for the great Southwestern territory (this side the Mississippi), which she helped to rescue from weak surrender to a foreign power. In *this* States'-rights conflict over the public lands she certainly deserved well of the country.

How the tide of battle over the public lands ebbed and flowed in the Continental Congress, from 1784 to 1787, is matter of too common history to call for detailed recital in this paper. I pause at this stadium of the conflict simply to remark that it was at that epoch that our Land Politics became complicated for the first time with the question of slavery and its extension, with the question of slavery prohibition, and the recapture of fugitive slaves. The conflict was hushed by the Ordinance of 1787, because, under the terms of that ordinance the Northern States bated their breath to demand the prohibition of slavery in only a limited

¹ "Correspondence of the Revolution," Vol. IV., p. 187.

part of the unoccupied territory, and to concede a provision for the rendition of fugitive slaves from that defined region. The Southern States bated their breath to demand nothing more as to this region (which they could never hope to occupy) than that it should not be used as a harboring-place for their escaping slaves. The differentiation of political opinions between the Northern and the Southern States at that time, so far as they were influenced by slavery, seems to have been based rather on the economical than on the social or purely political aspects of the institution.

If the States'-rights conflict over the public lands was composed for a time by the Ordinance of 1787, the truce was only temporary. The debatable region north of the Ohio River was taken forever out of the doubtful wager of battle between the two sections of the Union, but the wager of battle which had come to a standstill in the Continental Congress did but wave its red flag only the more violently in the eyes of the Federal Convention which was then sitting within its closed doors at Philadelphia. After the crisis between the competing claims of the small States and of the large States, the crisis between the competing claims of the planting States and the commercial States, the crisis between the States opposed to the continuance of the slave-trade and the States favoring it or winking at it—after all these crises had been successfully passed, the Convention stumbled on the old rock of offence lying between the "landed" and the "landless" States. Whether the vast public territory then belonging to the Union had been surrendered (in the eye of constitutional and public law) by the States separately ceding it, or by Great Britain in her Treaty of Peace with its definition of the metes and bounds of the United States, was still an open question between the two classes of States so differently related to the public domain.

The Land Question had gathered head from a variety of causes. Mr. Madison, in his notes of the debates held in the Continental Congress in the early part of the year 1783, when peace with Great Britain was in sight, explains how the

States'-rights conflict over the public lands, even at that early date, when Virginia had not completed her cession, was complicated with the abortive attempt of Congress to enucleate a fiscal policy for the whole country.¹ It was complicated besides with Federal relations of debit and credit at this period, when each State was prone to conceive itself a creditor as compared with its sister States, and when the Eastern States were especially convinced that they were creditors as compared with the Southern States. It was complicated, besides, with dynastic competitions arising between the old States and the foreseen new States, which were destined to be parcelled out from the Northwestern and Southwestern territory—a species of jealousy which grew more and more venomous as the prospect of such States loomed more and more clearly above the political horizon in 1788. It was complicated, besides, with preferences for conflicting land systems—with the New England preference for a township system, and with the Southern preference for indiscriminate locations.²

Such was the tangled political embroglio which the Federal Convention was called to unravel when, in the course of its deliberations, provision had to be made for the admission of new States and for the government of the Federal territory under the Constitution. The dissidence came at once to a sharp and sheer division of opinions. Daniel Carroll, of Maryland, true to the settled policy of his State, wanted an express provision in the Constitution declaring that nothing in that instrument should affect the right of the United States to the "back lands." He would like to have this provision agreed to "unanimously, but if such unanimity was impossible, he believed that "all risks would be run by a considerable minority sooner than give their concurrence." Williamson, of North Carolina, intimated that his State was well disposed to surrender her Western lands, but that she would not be coerced into it. Luther Martin, of Maryland, emphasized the unreasonableness of

¹ Elliot's "Debates," Vol. V., p. 59.

² Madison's Works, Vol. I., p. 318.

forcing the people of Virginia beyond the mountains, the people west of North Carolina and of Georgia, and the people in Maine northeast of Massachusetts, to continue under the States now governing them. He was unwilling that the small States should be called to guarantee the Western claims of the large ones. Gouverneur Morris expressed the opinion that if the forced division of the large States was to be the object of the new system of government, it might be expected that the gentlemen from the large States would "pretty quickly leave" the Convention. Luther Martin, in turn, expressed the opinion that if the small States were expected to guarantee the territorial claims of the large States, it would be found that the representatives of the former would, with equal firmness, take their leave of the document then lying unfinished on the table of the Convention. Mr. Wilson, of Pennsylvania, perceiving that the conflict of opinion under this head was irreconcilable, mildly proposed that nothing at all should be said on the litigated subject, either by way of affecting the claims of the several States or of the United States. Madison, too, with his mild wisdom, thought it best, on the whole, that the Constitution should be silent on the subject. So it was agreed to leave the whole matter *in statu quo*, and to remit the thorny topic to the legislative and judicial departments of the proposed new government; that they might settle, as best they could, a dispute too bitter for the Convention to allay.¹ For the nonce, it was found necessary to practise a policy of discretion and silence as to the point in controversy between the two classes of States differently interested in the disposition of the public lands. Such is the origin of the hesitating clauses in the Constitution which run as follows: "New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States or parts of States, without the consent of the Legislatures concerned, as well as of the Congress. The Congress shall have power to dis-

¹ Elliot's "Debates," Vol. V., pp. 492-497.

pose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular State."

Such was the drawn battle between the "landed" and the "landless" States in the Federal Convention of 1787. What wonder that a grant of power, which was rendered as colorless as possible to avoid giving umbrage to either of the two classes of States pitted against each other in this stage of the States'-rights conflict over the public lands, should have opened the flood-gates of controversy at a later day when a still more immitigable cause of strife had come to envenom the dispute which arose between two classes of States divided by a difference in their political rivalries because of a difference in their social institutions and economic interests? If an attempt had been made to insert in the Constitution a clear-cut definition of the respective prerogatives of the several States and of the United States in the matter of the territories and their government, we see that the Convention would have probably broken up without forming any Constitution at all. Disputes between the States as to their relative weight in the government because of a difference in their size or the number of their population; because of the repugnance of some States to the representation of slaves in the popular branch of Congress and in the Electoral College; because of the repugnance of eleven States out of thirteen to the long toleration of the slave-trade; because of the reluctance of the planting States to grant to Congress the power of passing commercial laws—these disputes were all laid to rest by the compromises of the Constitution. The one spectre which would not down was the shadow of the conflict over the public lands.

The conflict adjourned from the lists of the Federal Convention was resumed in the wider lists of the States so soon as they were called to sit in judgment on the Constitution for its ratification or rejection. Men like Grayson, of Virginia, who had helped to pass the Ordinance of 1787, were

swift to oppose the adoption of the Constitution, among other reasons for the paramount reason that the Northern States had already shown a disposition to surrender the navigation of the Mississippi River, and that with the powers conceded to them under the Constitution, they would be able to effect their sinister purpose against the interests and the just political preponderance of the Southern States. It was argued that the Eastern States had adhered for a time to the right of the South and West in the navigation of the Mississippi, because it was then regarded as a balance for the Newfoundland fisheries; but now that those fisheries had been secured to the North and East by the Treaty of Peace, the States of the North and East had shown a disposition to barter away the rights of the South and West in the Mississippi valley; and it was predicted that they would proceed to execute this design so soon as they were vested with the new powers granted by the Constitution. If the Mississippi River be shut up, immigration, it was urged, would be stopped entirely. There would be no new States formed on the Western waters. The new government would be a government of the seven Northern States. The contest for the Mississippi involved, therefore, "a great national contest"; that is, whether one part of the continent should govern the other. The Northern States had the majority, and would endeavor to retain it. "This was therefore a contest for dominion, for empire."¹

It will thus be seen that the States'-rights conflict over the public lands imperilled the ratification of the Constitution by the powerful State of Virginia. What weight the same argument had in postponing the ratification of the instrument by the State of North Carolina is matter of recorded history in the debates of her Convention and in the closing pages of the Secret Journal of the Continental Congress in 1788.²

After the Constitution had been adopted it cannot surprise us to find that the first great issue ever joined between

¹ Elliot's "Debates," Vol. III., p. 365.

² Secret Journals of Congress, Vol. IV., p. 453.

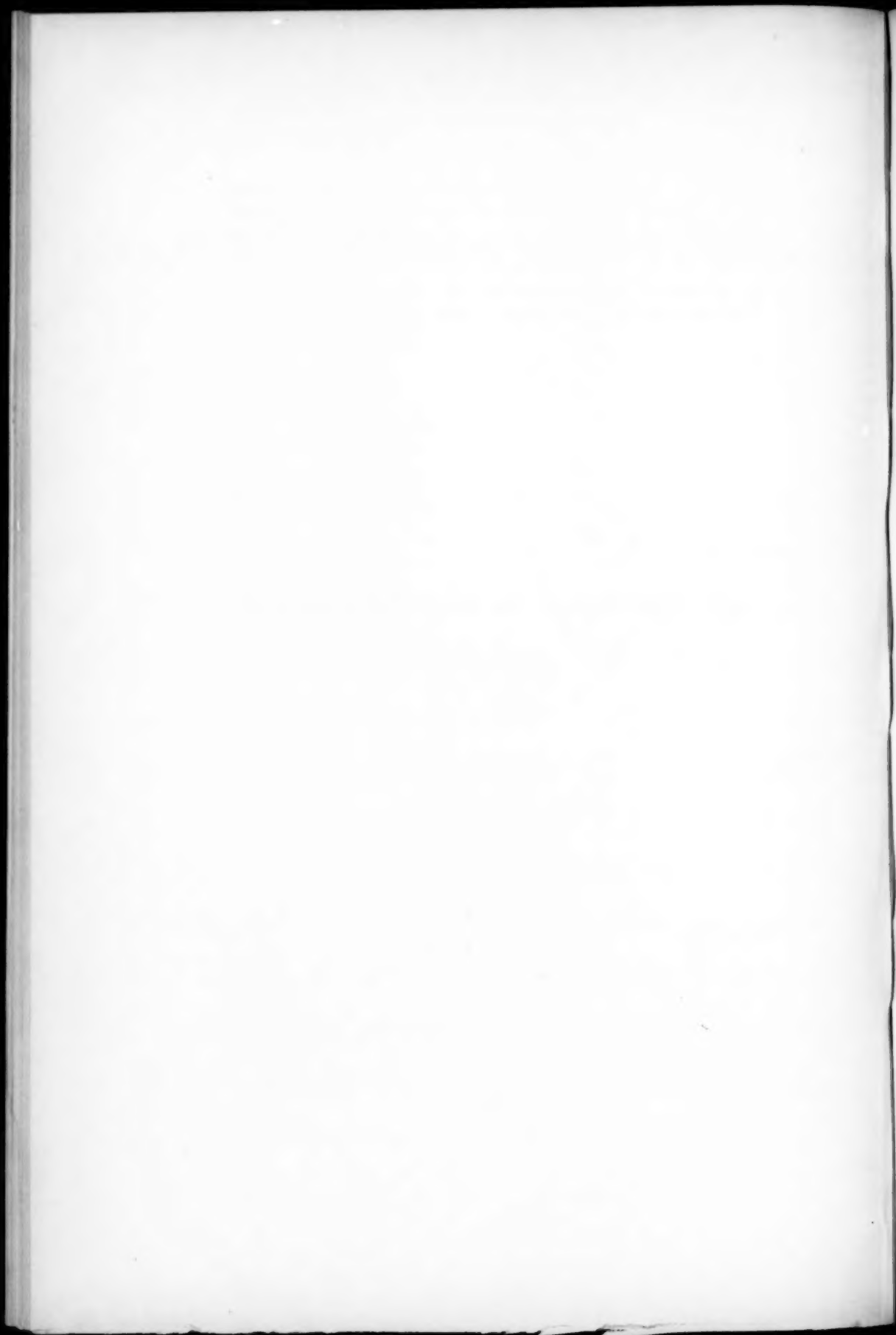
the jurisdictional rights of a State and of the United States should have arisen on a question of the public lands. The subject-matter of this controversy was the famous Indiana tract, which fills such a conspicuous space in the transactions of the Continental Congress. Virginia, by a formal act of her General Assembly, had declared in 1779 that the claim of the Indiana Company to certain lands "between the Alleghany Mountains and the river Ohio, above the mouth of the Little Kanawha Creek," was utterly void, and of no effect. After the Constitution had created a tribunal for the trial of controversies "between a State and citizens of another State," the Indiana Land Company brought a suit in the Supreme Court of the United States for the vindication of their alleged rights as nullified by the act of the Virginia Legislature. Thereupon the Virginia Legislature, in December, 1792, solemnly declared that the decision made by the State previous to the adoption of the Constitution could not be called in question by any other than the General Assembly of the Commonwealth "without a dangerous and unconstitutional assumption of power"; that the jurisdiction of the Supreme Court of the United States could not extend to a case which had been already decided by a competent tribunal; and, finally, that the State could not be made a defendant in the Supreme Court at the suit of any individual or individuals.¹

As was to be expected, the ill-defined form of words, contrived by the framers of the Constitution for the purpose of slurring over an irreconcilable discordancy, became a source of chronic dissension in Congress, as well as of early appeal to the Supreme Court. The antithesis between the "landed" and the "landless" States in the Federal Convention passed, under the Constitution, into an antithesis between the Northern and the Southern States. At first the conflict purported to be based on economical distinctions, of which slavery was recognized to be the implicit cause. In the year 1820 the implicit cause became explicit in the

¹ The subsequent stages of this States'-rights controversy may be traced in Conway's "Omitted Chapters of History," pp. 101, 102, 168-173.

terms of the Missouri Compromise line. In 1861 the States'-rights conflict over the public lands, considered as the source and symbol of political power in the Federal Union, passed from the forum of politics into the battlefields of civil war. The successive stages of this conflict in the halls of Congress, from 1790 to 1860, will be discussed in a separate chapter.

THE MARTYRDOM OF SAN PEDRO ARBUÉS



THE MARTYRDOM OF SAN PEDRO ARBUÉS.

BY HENRY CHARLES LEA.

It is well known that when Ferdinand of Aragon procured from Sixtus IV. the bull of October 17, 1483, extending over his ancestral territories of Aragon, Catalonia, and Valencia, the powers of his inquisitor-general Torquemada, his project met with considerable resistance. During the preceding three years the New Inquisition had been introduced throughout Castile, virtually without opposition, although there was considerable popular repugnance both to its methods and its results, but in Aragon the case was different, notwithstanding that for nearly two centuries and a half there had been an Inquisition permanently established there. This had, however, always been inert, and during the last century had given few manifestations of its existence.

The immediate cause for the organization of the Spanish Inquisition was the enormous number of converted Jews—*conversos* as they were habitually called—who had sought baptism under the pressure of the terrible massacres of 1391, seconded by the missionary labors of San Vicente Ferrer, and the inhuman repressive legislation of the fifteenth century. Converted in droves, there could be little real firmness of faith among the conversos or their immediate descendants, and they were everywhere suspected, with more or less justice, of secretly leaning to their old religion. At the same time conversion had opened a new and brilliant career to them. Relieved from the disabilities which oppressed so heavily their unconverted brethren, the keen intellects and superior business capacity of the New

Christians speedily won for them commanding influence. They rose to the loftiest stations in Church and State, they accumulated enormous wealth, and they intermarried into the noblest families.¹ The hatred which had formerly been concentrated upon their religion was developed through jealousy into an antagonism of race, for which their presumable Judaizing tendencies gave colorable excuse. The demand for the suppression of these aberrations from the faith grew stronger as the years passed away, until, after trying various less radical expedients, Queen Isabella was convinced that serious detriment to religion could only be averted by the establishment of the Inquisition, and the dread tribunal commenced its functions in Seville in January, 1481. The number of its victims speedily satisfied the faithful of the extent of the evil to be overcome and carried the conviction of impending ruin to all the conversos of Spain.

They were as numerous and as powerful in Aragon as in Castile. They occupied important posts in the municipal organizations of the cities, in the courts, in the administrative departments of the government and in the churches. Through matrimonial alliances they were connected with many of the most illustrious families, and they had friends in every quarter. They had behind them, moreover, the jealousy which Aragon felt of Castile, and its strenuous determination to uphold its ancient rights and liberties. The institutions of Aragon had not undergone the dissolving process of the anarchy which had afflicted Castile and had enabled the strong wills of Ferdinand and Isabella to lay the foundation of an absolute monarchy. Although the tyrannical reigns of Ferdinand of Antiquera and his descendants had somewhat abridged Aragonese independence,

¹ About 1560, Cardinal Mendoza y Bobadilla presented to Philip II. a memorial in which he showed that virtually the whole nobility of Castile and Aragon was contaminated with Jewish blood. It is full of curious details of family history most unpleasing to family pride, and richly deserved the name which it obtained of *Tizon de la Noblesa*, or Blot on the Nobility. My copy is in MS. and I believe that it has never been printed.

much yet remained, and it was not till a century later that the revolt engineered by Antonio Perez to break his fall enabled Philip II. to develop the royal prerogative. The Aragonese could only view with bitter disfavor the extension of Torquemada's jurisdiction over them and the reduction of their land to the position of a spiritual province of Castile, while there was still enough left of the old constitution to render it necessary for Ferdinand to reckon with them.

No effort, therefore, was made to put into execution the bull of October, 1483, until it could, after some fashion, be done with the consent of the kingdom. The national Cortes were convoked to meet at Tarazona, January 15, 1484; Ferdinand and Isabella arrived there on the 19th, and remained until May 1st. Then the opening of the campaign against Granada required their presence elsewhere, and Ferdinand left as his representative his natural son, Alfonso de Aragon, Archbishop of Saragossa, with a commission for eighteen months as lieutenant of the kingdom. Torquemada had accompanied the sovereigns; the royal influence was brought to bear, and after considerable discussion an understanding was reached on April 14th.¹ Torquemada's first official act recorded is his appointment, on May 4th, as inquisitors for Aragon, of Fray Gaspar Juglar, a Dominican, and Pedro Arbués, a canon of Saragossa, commonly known as Master Epila, and for Valencia, of a monk named Juan de Epila and Martin Iñigo. Thus the vehemence of Torquemada and the fixed resolve of Ferdinand had borne down opposition; the tribunal was established, although informally, and it set to work without delay. In fact, Torquemada must already have been exercising his functions and trying cases, for on May 10th an *auto de fé* was held, in which four persons were penanced and sentenced to suffer confiscation; it was presided over by a Dominican inquisitor, Master Julian, who then disappears from view, poisoned by the conversos, it is said, with

¹ Zurita, *Añales de Aragon*, Lib. xx. c. 56, 65.

some *rosquillas*, or sweet cakes.¹ In less than a month, on June 3d, there was another auto, held in the courtyard of the archiepiscopal palace; this time it was not bloodless, for two men were executed and a fugitive woman was burned in effigy.²

No more autos were held in Saragossa for eighteen months. The people of Aragon had apparently been taken by surprise, and had permitted the establishment of the tribunal, but as they came to realize its working—the frequent arrests and the trials, the uncertainty and fear which hung over the population in which Jewish blood was so largely mingled—there arose an opposition which called a halt, and Arbués never celebrated another auto, at least in Saragossa. Not only the conversos, but many of the old Christians denounced the Inquisition as an invasion of the liberties of the land, especially in the secrecy of its proceedings and the confiscation of the estates of those condemned. Yet these were traditional features of inquisitorial proceedings everywhere, and it shows how obsolete the old Inquisition had become that they were now regarded as novelties. So many conversos were lawyers, judges, and high officials that they had abundant opportunity to impede the action of the tribunal by obtaining injunctions and decisions of the courts as to confiscations, which they

¹ I am inclined to think that the name of Master Julian may be the error of a copyist for Torquemada's appointee, Gaspar Juglar, of whom nothing further is heard; in the conspiracy against San Pedro Arbués he is not alluded to as an object of vengeance.

My authority with regard to Master Julian is a MS. "*Memoria de diversos Autos de Inquisicion celebrados en Çaragoça desde el año 1484 asta el de 1502.*" It is in a handwriting apparently of the eighteenth century—probably a copy of a document contemporary with the events. The record it presents bears on its face every mark of authenticity, and although there are occasional discrepancies of names and dates between it and the list at the end of the *Libro Verde de Aragon*, in general they correspond, as it also does with such trials of the period as I have examined from the Llorente MSS. in the Bibliothèque Nationale de France.

² MS. *Memoria de diversos Autos*. The list in the *Libro Verde* mentions no executions in 1484, but Trasmiera (*Vida y muerte de Pedro Arbués*, Madrid, 1664, p. 60) credits Arbués with two autos of 1484, one in May and one in June.

regarded as the most assailable point of attack, believing that if these could be stopped the whole business would perish of inanition.¹

The most effective way of overcoming this opposition appeared to be by forcing individually all who held public office to pledge obedience. On September 19th, the royal and local officials were assembled, and a solemn oath was administered to them to maintain inviolably the Holy Roman Catholic faith, to employ all their energies against every one, of whatever degree, who was a heretic or suspect of heresy, or a favorer of heretics, to denounce any one whom they knew to be guilty, and moreover to appoint no one to office who was suspect in the faith. The principal nobles were then required to take the oath, and it was gradually administered to all the different estates of the realm. In November, Torquemada held an assembly of inquisitors at Seville, where rules for the conduct of the Inquisition were adopted, and these were promptly sent to Saragossa, together with appointments for all the different officials necessary for the organization of the tribunal. It was thus fully furnished, and quarters were allotted to it in some houses between the cathedral and the archiepiscopal palace, convenient to the ecclesiastical gaol.²

In spite of oath-taking, the agitation grew stronger. The rich conversos promised large sums to Ferdinand and Isabella if they would forego the confiscations, and they labored especially with the latter, whom they regarded as peculiarly under the influence of Torquemada. A heavy contribution was also offered to the papal court, and the lieutenant of justice in Aragon, Tristran de la Porta, was vainly urged to prohibit the Inquisition altogether. So universal became the opposition that the Four Estates of the kingdom were called together; the cause was held to be one which affected the liberties of the land, and a solemn embassy was sent to Ferdinand in the name of the kingdom. The inquisitors, who had recently met with a check

¹ Zurita, Lib. xx. c. 65.—Paramo de Orig. Officii S. Inquisit., pp. 180-1.

² Zurita, Lib. xx. c. 65.

at Teruel, where the people would not allow them to open their tribunal, held a meeting at Celha, whence they doubtless sent representations to the court as to the dangers impending over the faith. The answer of Ferdinand, in February, 1485, was unwavering, and the Inquisition, assured of royal support, commenced to work with fresh vigor, arresting suspected persons and pushing the trials energetically.¹

The conversos were desperate. All legitimate means of averting destruction had failed, and the bolder spirits began to whisper that the only resource remaining was to kill an inquisitor or two, when the warning would prevent others from exposing themselves to the hazard. They might well feel that the suspense of impending doom was unbearable, for secret inquiries were on foot respecting them all, and every man, whether innocent or guilty, was at the mercy of the evil disposed, for the names of informers and witnesses were kept rigidly secret, and malignity had a safe opportunity for gratification. Sancho de Paternoy, the Maestre Racional of Aragon, who was compromised in the conspiracy, when on trial confessed to enmity towards Juan de Anchías, the notary of the Inquisition, because the latter had inquired of a Jewish tailor whether Paternoy had a seat in the Synagogue, showing how every source of secret information was exploited to obtain evidence against prominent conversos.² In fact, it seems to have been a current saying that Arbués was ready to pay for satisfactory testimony.³ The friends of the conversos in the royal court, moreover, chief among whom was Ferdinand's treasurer, Gabriel Sanchez, himself a converso, on being apprized of the design, approved of it, and wrote to them that if they would kill an inquisitor, it would put an end to the Inquisition.⁴

¹ Zurita, Lib. XX. c. 65.

² Libro Verde de Aragon, fol. 67. This trial of Paternoy is omitted from the Libro Verde as published in the *Revista de España*, by Señor Rodrigo Amador de los Rios, but a transcript of it was kindly furnished to me many years since by his father, Don José Amador de los Rios.

³ MSS. Bib. Nat. de France, fonds espagnol, T. 80, fol. 4.

⁴ Libro Verde de Aragon (*Revista de España*, CVI., 281-2).

At first the intention was to include in the slaughter not only Pedro Arbués but his assessor Martín de la Raga, and Micer Pedro Frances, and a plot was laid to drown the assessor while he was walking by the Ebro, but he chanced to be accompanied by two gentlemen and it failed.¹ The whole attention of the conspirators was then directed to making way with Arbués. Master Epila was not a man of any special note, though his selection by Tòrquemada to fasten the Inquisition on recalcitrant Aragon shows that he must have acquired a reputation for dauntless firmness, and we are told that he was an eloquent preacher. Born in 1441, he had in 1468 obtained a fellowship in the Spanish college at Bologna founded by Cardinal Albornoz, and in 1473 he attained the doctorate of theology. The next year he was elected canon in the cathedral of Saragossa, where he returned in 1476. We may readily believe the assertion that he refused for some time the position offered him by Torquemada, for though it was a promising avenue to high preferment, the labor which it involved threatened to be hard and perilous.² His reluctance was overcome, and we have seen how energetically he commenced his new career, yet the interruptions which he experienced had prevented him from accomplishing much, and he fell a victim not to revenge but to fear.³

The conspiracy was long in hatching and the secret was wonderfully well kept, considering that correspondence concerning it was extensive. For six months meetings were held for consultation, sometimes in the houses of conspirators and sometimes in the churches. It was agreed to raise a sum of money with which to hire assassins, and three treasurers of the fund were appointed. Juan de Esperandeu, a currier, known as a desperate man, whose father had been

¹ Zurita, Lib. xx. c. 65.

² Trasmiera, Vida de Pedro Arbués, pp. 15, 32, 50.

³ Kaulbach's celebrated picture of Arbués, condemning to death a family of heretics, including father and mother son and daughter, is purely imaginative symbolism and not history, for Arbués never had a chance to commit wholesale slaughter, however much his zeal might have prompted him to it. If his portraits in Trasmiera's book be authentic, his features were by no means harsh or stern.

arrested, undertook to find the assassins and hired Juan de la Badía for the purpose. In April or May, 1485, an attempt was made on the house of the inquisitor, but the conspirators were frightened off and the matter was postponed for several months. It was then determined to kill him at matins in the cathedral, and watch was kept for three or four nights without success. At length, on the night of September 15th, Esperandeu went to la Badía's house, and awakened him; they returned to Esperandeu's house where they found the latter's servant, Vidau Durango, a Frenchman, Mateo Ram, one of the chiefs of the plot, his squire Tristanico Leonis, and three others who wore masks and remained unidentified. Together they went to the cathedral and entered by the chapter door, which was open on account of the service of matins. Arbués was kneeling in prayer between the high altar and the choir where the canons were chanting; he knew that his life was in danger, for he wore a coat of mail and a steel cap, and a lance which he carried was leaning against a pillar. La Badía whispered to Durango: "There he is, give it to him!" Durango stole up behind him, and with a back-stroke, clove his neck, between his armor, from the nape through to the beard. He rose and staggered towards the choir, when la Badía followed him with a sword-thrust which pierced his arm, and Mateo Ram is said to have thrust him through the body. He fell, the assassins hurried away, and the canons, alarmed at the noise, rushed from the choir and carried him to his house adjoining the cathedral, where surgeons were summoned who pronounced the wounds mortal. He lay for twenty-four hours, repeating, as we are told, pious ejaculations, and died September 17th, between one and two in the morning. Miracles at once attested his sanctity. The holy bell of Villila tolled on the night of the murder without human hands, breaking the bull's pizzle with which the clapper was secured; his blood, which stained the tiles of the cathedral, after drying for two days, suddenly liquefied and welled forth, so that crowds came to dip in it cloths and scapulars, and had to be driven off when he was

buried on the spot where he fell; when the conspirators were interrogated before the inquisitors, their mouths turned black and their tongues became parched so that they were unable to speak until water was given to them. Another miracle, wrought by his intercession, as we are assured by Juan de Anchías, the zealous notary of the Inquisition, was that the trials of the assassins led to the discovery of countless heretics who were duly penanced or burnt.¹ Pecuniarily, the affair had not been costly; the whole expense had been only six hundred florins, of which one hundred and fifty were to be paid to the assassin.²

The short-sighted crime, of course, worked only for the benefit of those whom it was intended to destroy. Its immediate effect was to cause a revulsion of popular feeling which had been so markedly hostile to the Inquisition. The news of the assassination spread with marvellous rapidity through the city, and before dawn the streets were filled with excited crowds, shouting: "Burn the conversos who have slain the inquisitor!" and there was danger that in the exaltation of feeling not only the conversos would be massacred, but the Jewish and Moorish quarters would be sacked. By daylight the Archbishop, Alfonso de Aragon, mounted his horse and traversed the streets, calming the mob with promises of speedy justice. A meeting was at once called in the Diputacion, or House of Deputies, of all the chief personages in the city, which resolved itself into a national assembly, and empowered all ecclesiastical and secular officials to proceed against every one inculpated with all rigor and without observing the *fueros* and customs of the land.³ For some days the conversos continued to flatter themselves that with money they could disarm the wrath of Ferdinand and Isabella; they had, they said, the

¹ Libro Verde de Aragon (*Revista de España*, CVI., pp. 281-6, 288).—Zurita, Lib. XX. c. 65.—MS. Memoria de diversos Autos.

Brianda de Bardaxí, when accused before the Inquisition of expressing joy at the death of Arbués, proved in her defence that she had had a cloth dipped in the miraculous blood and preserved it as a relic of the martyr.—MSS. Bib. Nat. de France, fonds espagnol, T. 80, fol. 33.

² MS. Memoria de diversos Autos.

³ Zurita, Lib. XX. c. 65.

whole court with them, and the sympathy of all the magnates of the kingdom,¹ but they miscalculated Ferdinand's shrewd resolve to profit to the utmost by the affair, and the consequent weakness of their friends. The royal anger was in fact much dreaded, and a few days later the deputies wrote to the king reporting what had been done. The criminals had already scattered in flight; the judges had written to foreign lands for aid in intercepting the fugitives, and both city and kingdom would willingly undergo all labor and expenses necessary to avenge the crime.² A proclamation was also issued excommunicating all those who, having knowledge of the conspiracy, should not within a given time come forward and reveal what they knew.³

It was probably in consequence of the murder that Ferdinand and Isabella succeeded in obtaining from Innocent VIII. a bull of April 3, 1487, ordering all princes and rulers to seize and deliver to the Inquisition of Spain, all fugitives who should be designated to them, thus extending the arms of the Holy Office throughout the whole of Christendom, and practically outlawing all refugees. Fortunately, however, the cruel order received no obedience, and the jurisdiction of the Spanish Inquisition was restricted to Spanish territory.⁴ As regards the assassins, when they crossed the frontier, they were safe, as a rule, though there are one or two cases of co-operation by the Inquisition of Toulouse. Gaspar de Santa Cruz, for instance, one of the leaders of the conspiracy, fled to Toulouse and died there. He was condemned and burnt in effigy at Saragossa, July 28, 1486. His son, Geronimo, had accompanied him in his flight, and was ordered in penance to take his father's sentence to Toulouse, to disinter the body and bring a certificate of the fact from the Toulousan Inquisition, all of which was duly performed.⁵

At home, nothing was left undone to exploit the affair to the utmost, and prominent among the means appropriate

¹ MS. Memoria de diversos Autos.

² Gams, *Zur geschichte der spanischen Staatsinquisition*, p. 34.

³ MSS. Bib. Nat. de France, fonds espagnol, T. 81.

⁴ Llorente, *Histoire Critique*, I., 263.

⁵ MS. Memoria de diversos Autos, Auto 11.

for this was the stimulation of popular veneration for Arbués as a martyr. On September 29, 1486, his solemn exequies were celebrated with as much magnificence as those of the holiest saint; a splendid tomb was built, to which his remains were translated with much pomp, December 8, 1487; a statue was erected to him with an inscription by Ferdinand and Isabella, and over it a bas-relief representing the assassination. During a pestilence, in 1490, the city ordered a silver lamp of fifty ounces placed before the tomb, and another silver lamp to burn day and night.¹ Notwithstanding this, there was much popular sympathy for the murderers. The city of Tudela gave refuge to some of the principals and enabled them to escape to Navarre, for which, in a letter of May 4, 1486, Ferdinand threatened the citizens as defenders of heresy, and forced them to submit to the Inquisition of Saragossa²; and, in addition to this, the alcaide, Pedro Gomez, and eight of the leading citizens were tried for the offence and underwent public penance in the auto de fé of March 2, 1488.³ The same party of fugitives were harbored, for the consideration of sixty florins, by the Señor of Cadreyta, Jayme Dias de Almendariz, an ancestor of the Dukes of Alburquerque, for which he was similarly penanced.⁴ In fact, some of the most illustrious nobles of the kingdom were prosecuted and punished by the Inquisition for the same offence—the Infante Jayme of Navarre, Lope Ximenes de Urrea, count of Aranda, Blasco de Alagon, lord of Sástago, Lope de Rebolledo, lord of Monclus, Pedro Jordano de Urries, lord of Ayerbe, Luis Gonzalez, royal secretary, Alonso de la Caballería, vice-chancellor of Aragon, Felipe de Clemente, prothonotary of Aragon, Gabriel Sanchez, royal treasurer, Fernando de Toledo, penitentiary of Saragossa, Luis de la Caballería, canon and chamberlain of the cathedral, and many other notables of Church and State.⁵ The narrow escape made

¹ Zurita, Lib. xx. c. 65; Llorente, I., 192-4; Trasmiera, p. 101.

² Amador de los Rios, *Historia de los Judíos de España*, III., 269.

³ MS. Memoria de diversos Autos, Auto 29.

⁴ MS. Memoria de diversos Autos, Auto 27.

⁵ Llorente, I., 204-6.

by Juan de Pedro Sanchez, one of the contrivers of the plot, illustrates the prevalence of this sympathy. He found refuge in Toulouse, where he was recognized by some Aragonese students, who procured his arrest. They at once dispatched their servants with letters to the inquisitors of Saragossa; the messengers chanced to put up at the house of a notary, Juan de Fatas and his brother Pedro Augustin, who obtained possession of the letters, opened them, and communicated their purport to Mossen Guillen Sanchez, brother of the prisoner. The three, with Bernardo Bernardi and Pedro Celdrion, forthwith wrote to the students and to friends at Toulouse to release Juan Sanchez, and effected it; meanwhile they had delivered the letters to the inquisitors, and when the latter sent to Toulouse, the bird had flown. The five who were concerned were mercifully treated in being penanced in the auto of May 6, 1487, fined a thousand florins apiece and the expenses, together with deprivation of their offices.¹

In spite of this practical sympathy, the conspirators were woefully in error when they imagined that the death of their victim would deter others from taking his place. There was no danger for inquisitors now in Aragon; and Torquemada promptly dispatched Fray Pedro de Monte Rubio, Prior of the Ladies of St. Dominic in Castile, to take charge of the Inquisition, and to prosecute the assassins.² He was speedily at work, and by December 20th he celebrated an auto, in which a man and a woman were burnt.³ After this we lose sight of him for a time, and the post was filled by Fray Juan de Colivera, a Dominican, Juan de Colmenares, Cistercian abbot of Aguilar, and Master Alonso de Alarcon, canon of Palencia. The Inquisition was removed to the royal palace, known as the *Aljafería*, as an evidence that it was under the royal safe-

¹ MS. Memoria de diversos Autos, Auto 22.

² Libro Verde (*Revista de España*, CVI., 288). He is called Fray Miguel de Monte Rubio in trials held at Saragossa, in 1491 and 1492 (MSS. Bib. Nat. de France, fonds espagnol, T. 81). The auto of March 15, 1487, was held by a Maestro Miguel, who is presumably the same (MS. Memoria de diversos Autos).

³ MS. Memoria de diversos Autos, Auto 3.

guard, and Ferdinand proclaimed that he and his successors took it under their special protection.¹

Pursuit was hot after the murderers, and the avengers were soon on their track. Although both secular and ecclesiastical courts were empowered by decree to punish the conspirators, the affair seems to have been left entirely to the Inquisition, and its action illustrates a characteristic difference between it and its mediæval predecessor. When St. Peter Martyr was murdered by heretics in 1252, although his assassins were caught and tried, not one was put to death; on profession of repentance and conversion they were admitted to penance, and were utilized much more advantageously than by shedding their blood. In the present case, the policy pursued was wholly different. Vidau Durango was soon caught at Lerida, and made no difficulty in revealing the details of the plot and the names of the accomplices. The work of retribution followed and continued for years. The first execution took place in the auto of June 30, 1486, when Juan de Pedro Sanchez was burnt in effigy; Vidau Durango, whose communicativeness had earned some claims for mercy, had his hands cut off, and it was not until he was dead that he was dragged to the market-place and quartered, the fragments being hung up in the streets, and the dissevered hands nailed to the door of the Diputacion, or House of Deputies. Juan de Esperandeu was more harshly treated. He was dragged while alive to the great portal of the cathedral, where his hands were cut off; he was then dragged to the market-place, where he was beheaded and quartered, and his members shared the same fate as those of Durango.² On July 28th, Gaspar de Santa Cruz and Martín de Santangel were burnt in effigy; and Pedro de Exea, who had contributed to the fund, was burnt alive. On October 21st, María de la Badía was burnt as an accessory. On December 15th, an auto was hastily arranged. Francisco de Santa Fé, assessor of the Governor of Aragon, and one of the leading conversos of the kingdom, was fatally compromised in the conspiracy;

¹ Zurita, Lib. xx. c. 65.

² MS. Memoria de diversos Autos, Auto 10.

hopeless of escape, in the early morning, he threw himself from the battlements of the tower in which he was confined, and was dashed to pieces; on the same day an auto was celebrated, his remains were burnt, and his bones, enclosed in a box, were cast into the Tagus, as though it was feared that they would be revered as those of a martyr. Juan de la Badia eluded his tormentors in yet more desperate fashion. An auto was arranged for January 21, 1487, in which he was to suffer; in his cell, the day before, he broke in pieces a glass lamp and swallowed the fragments, which speedily brought the death he craved; the next day his body was dragged and quartered, and the hands cut off, and at the same auto there were burnt in effigy as accomplices the fugitives Pedro de Almazan the elder, Anton Perez, and Pedro de Vera. On March 15th, Mateo Ram, who superintended the murder, had his hands cut off, and was then burned, with Juan Frances, who was suspected of complicity, and the effigies of three fugitives, Juan Ram, Alonso Sanchez, and Garcia de Moros.¹

Thus the ghastly tragedy went on for years, as the ramifications of the conspiracy were explored and new victims were denounced by the accused. It was not until 1488 that Juan de la Caballeria was placed on trial, on the evidence of the wife of Gaspar de la Caballeria that her husband told her Juan had offered him five hundred florins to kill the inquisitor. Juan admitted having heard from Juan de Pedro Sanchez that there was a fund for the purpose, and that he had mentioned it to Gaspar, but concluded that Gaspar had not resolution enough for the deed. His trial was prolonged; he died in gaol in 1490, and his body was burned in the auto of July 8, 1491, while Gaspar was penanced in that of September 8, 1492.² At this latter auto, Sancho de Paternoy, Maestre Racional of Aragon, was condemned to perpetual imprisonment. His trial had been a prolonged one; he had been repeatedly tortured, and had confessed privity to the murder, and had then retracted wholly, saying that he knew

¹ MS. Memoria de diversos Autos, Autos 11, 14, 16, 18, 20.

² MSS. Bib. Nat. de France, fonds espagnol, T. 81. MS. Memoria, Autos 43, 45.

nothing about it, and that he had spent the night of the assassination at the palace of the archbishop. His guilt was not clear; he had powerful friends, especially Gabriel Sanchez, Ferdinand's treasurer, and he escaped with perpetual imprisonment, for the suspicion of being concerned in the matter.¹

Any expression of satisfaction at the murder was an offence to be dearly expiated. Among the crimes for which Pedro Sanchez was burned, May 2, 1489, was this.² It was one of the chief accusations brought against Brianda de Bardaxí, but though she admitted it under torture, she retracted it afterwards; nothing could positively be proved against her, and she was let off with a fine of one third of her property and temporary imprisonment.³ The assassination placed all Aragon at the mercy of the Inquisition, and it did its work thoroughly.

It is impossible to reconstruct a full catalogue of the victims. Anchías, the notary of the Inquisition, in his detailed account of the affair, only enumerates as put to death in person or in effigy three treasurers of the fund raised for the purpose, five assassins, and four accomplices, beside Sancho de Paternoy and Alonso de Alagon, who escaped with imprisonment through the influence of their friends.⁴ The indications in the MS. "*Memoria de diversos Autos*" are unfortunately not complete, as, after May, 1489, the crimes of the victims are not specified, but so far as it goes, and comparing it with the *Libro Verde* and other sources, I find nine executed in person, beside two suicides, thirteen burned in effigy, and four penanced for complicity in the crime. Besides, there are two persons penanced for suborning false testimony in favor of Mossen Luis de Santangel (who was burnt August 18, 1487), two for rejoicing at the murder, and seventeen for aiding or sheltering the guilty, in addition to a considerable list enumerated by Llorente. Altogether it is probable that about a hundred may have

¹ *Libro Verde (Revista de España, CVI., 287, 589). Ib. MS., fol. 65-74.*

² MS. *Memoria*, Auto 36.

³ MS. Bib. Nat. de France, fonds espagnol, T. 80.

⁴ *Libro Verde (Revista de España, CVI., 287).*

suffered in various ways, from death to penances more or less severe.¹

The canonization of San Pedro Arbués offers a significant contrast to that of St. Peter Martyr, who was enrolled in the catalogue of saints in less than a year after his assassination. In spite of the miracles which accompanied the death of Arbués, and of innumerable subsequent ones which attested his sanctity, the papacy was by no means disposed to recognize him as a saint. The Holy See was at the time involved in contests with the Spanish Inquisition over questions of appeals, and it was gradually excluded from all supervision and control, which presumably may account for its indisposition to bear testimony to the merits of the martyr. There must have been some jealousy at work to enable the kindred of the assassins to obtain from the curia an order for the removal from the cathedral of the "insignias y mantetas" of the guilty—the scrolls bearing their names, their crimes, and their punishment, the exposure of which to public view in the churches was part of the routine of the Inquisition, and an infliction keenly felt by the families of the convicts. It required strenuous efforts to obtain permission to let them remain.² So strong was the feeling

¹ Llorente undoubtedly exaggerates when he says that the executions numbered more than two hundred (*Histoire critique*, I., 204-6). Amador de los Rios is similarly mistaken in saying (*Hist. de los Judíos*, III. 266) that the greater part of those who suffered in the autos at Saragossa from 1486 to 1492 were concerned in the affair. The abstracts of sentences given in the MS. *Memoria* show that comparatively few of these had any thing to do with it.

² *Libro Verde* (*Revista de España*, CVI., 288). They are still to be seen in the cathedral, after three centuries have passed away (Amador de los Rios, III., 266), and the swords of the assassins still hang on the pillars near the entrance of the chancel (Vicente de la Fuente, in Oviedo's *Quinquagenas*, I., 73). Oviedo himself states that he had seen the withered hands of the murderers still attached to the door of the Diputacion, and he tells the story of a lady of his acquaintance whose father and mother had been burned as accomplices in the murder. She accompanied Catharine of Aragon to England as maid of honor, and one day while flirting with a gentleman of the court she several times called him "un frio." Losing patience he retorted that at least she could not sing the song "dese mal murio mi madre." At this brutal reminder of the horrors through which she had passed she burst into tears, and was obliged abruptly to leave the royal circle (*Quinquagenas*, I., 72-3).

excited that Martín García, Bishop of Barcelona and Inquisitor of Saragossa, who had participated actively in the trials, pronounced the papal bull to be obreptitious, and inflicted on it the indignity of placing it on the tomb with the sanbenitos of the assassins.¹

This was not calculated to placate the Holy See, and the effort to obtain the canonization of Arbués was endless. In 1537, at the request of the all-powerful Charles V., Paul III. at last ordered informations to be taken, when many miracles were put on record, but nothing was concluded. In 1604 another attempt was made, with no result, except to swell the list of authentic marvels wrought by his intercession. At the instance of Philip III., in 1615, Paul V. had another investigation commenced, and yet another in 1618. Again, in 1622, Gregory XV. yielded to the united requests of Philip IV., of the Inquisition, of the city and church of Saragossa, and of the Cofradia de San Pedro Martyr for another inquest. In 1652 the matter was again agitated by renewed demands from the same sources; the case dragged on, until, in 1663, the Congregation of Rites announced that, after mature discussion, the martyrdom and miracles were approved, and that in due time the canonization might be safely proceeded with. Alexander VII., however, without awaiting this due time, issued a brief of beatification April 17, 1668, which permitted Arbués to be represented with the nimbus of sanctity, his relics to be exposed for veneration, but not to be carried in processions, and his office to be celebrated on September 17th in the cathedral of Saragossa, the church of Epila, and the chapels of the inquisitor-general and of the Aragonese Inquisition.² Arbués was thus admitted into the inferior order of the Blessed; this step in the process of canonization seems to have satisfied Spain for the time, and the declaration of the dignity of saintship was postponed for a couple of centuries.

¹ Paramo de Orig. Officii S. Inquis., p. 184.

² Trasmiera, Vida de Pedro Arbues, pp. 98, 99, 133, 137, 139. Benedict. PP. XIV. de Servorum Dei Beatificatione Lib. I., c. xxx., No. 4.—Mag. Bull. Roman. Ed. Luxemb. T. VI., 195. For the distinction between beatification and canonization the reader can consult Ferraris, Prompta Bibliotheca s. v. *Veneratio Sanctorum*, No. 11 sqq.

To the Spaniards, however, his sanctity was unquestionable, and he was commonly called San Pedro Arbués, in spite of the fact that the Holy See had thus halted half-way. It was not until the Spanish Inquisition had long been merely a matter of history that he was declared to be on a level with those kindred spirits, St. Peter Martyr and St. Giovanni Capistrano. In the efforts of Pius IX. to restore to the Church its mediæval lustre, the function of adding to the calendar of saints was not lost sight of. Archbishop Josaphat of Polocz had been beatified in 1642, and the nineteen martyrs of Gorcum in 1675. Their cases, and that of Arbués, were taken up in 1864, together with four others. García Gil, Archbishop of Saragossa, and his canons promptly presented the necessary supplication for the canonization of Arbués, pointing out that the storm which threatened the Church could best be met by the blood and triumph of the martyrs; and it is perhaps significant that two days before the issue of the syllabus of 1864, on December 6th, the relator of the cause, Cardinal Carlo Sacconi, in consistory, put the question whether the canonization of Arbués could be safely proceeded with, and the cardinals unanimously voted in the affirmative. Pius, however, postponed rendering his supreme judgment, and asked those present to pray for God's help to enlighten him. It was not until February 23, 1865, that Pius announced that the canonization could be safely carried out, and Cardinal Patrizi in publishing the decree called attention to the infinite wisdom of God which had delayed the matter until these times when the Jews were furnishing money and brains to the enemies of the Church in their ceaseless assaults. Then a long interval occurred, attributable doubtless to the rapid development of Victor Emmanuel's kingdom, until May 11, 1866, when, in a secret consistory, Pius announced that in these perilous times, when the bonds of society seem to be dissolved, he had been led to carry to the end the canonization of the two martyrs, Josaphat Kunciewicz and Pedro Arbués, and on the question being put the cardinals unanimously answered: "Placet." The struggle of Austria with Italy and Prussia during the summer of 1866 was not condu-

cive to the furtherance of the matter, and it was not until November that Pietro Giannelli, Archbishop of Sardinia, and Secretary of the Congregation of the Council, was instructed to notify, on December 8th, all the bishops throughout the world, that on June 29, 1867, the eighteenth centenary of the martyrdom of Peter and Paul, the canonization would be celebrated of Josaphat, Arbués, and the rest. The prelates were summoned to be in Rome at least one month in advance, in order to be present in the consistories in which they were to vote.¹

From all the four quarters of the globe covered by the wonderful organization of the Catholic Church, the prelates assembled to the number of about two hundred and thirty. As they arrived, printed statements of the claims of the several nominees for saintship were handed to them, that they might be able to act understandingly, and in that relating to Arbués the Freemasons were enumerated with the Jews as persecutors of the Church, and it was pointed out that the inscrutable divine wisdom had resolved that, from his seat among the Blest, Arbués should rush to commence the contest with the Jews. Consistories were held on the 3d, 6th, and 12th of June, in which the merits of the saints were recited, and in the last one a vote was taken, in addition to which everyone present was required to hand in a written opinion. The result was of course unanimous, and on the 29th, in St. Peter's, magnificently decorated for the occasion, the formal canonization was celebrated with the solemn and impressive ceremonies which the Church so well knows how to organize. The venerable pontiff pronounced the sentence of canonization: "We decree and define them to be saints, and we add them to the catalogue of saints, ordering their memory to be commemorated with pious devotion every year by the Church universal."²

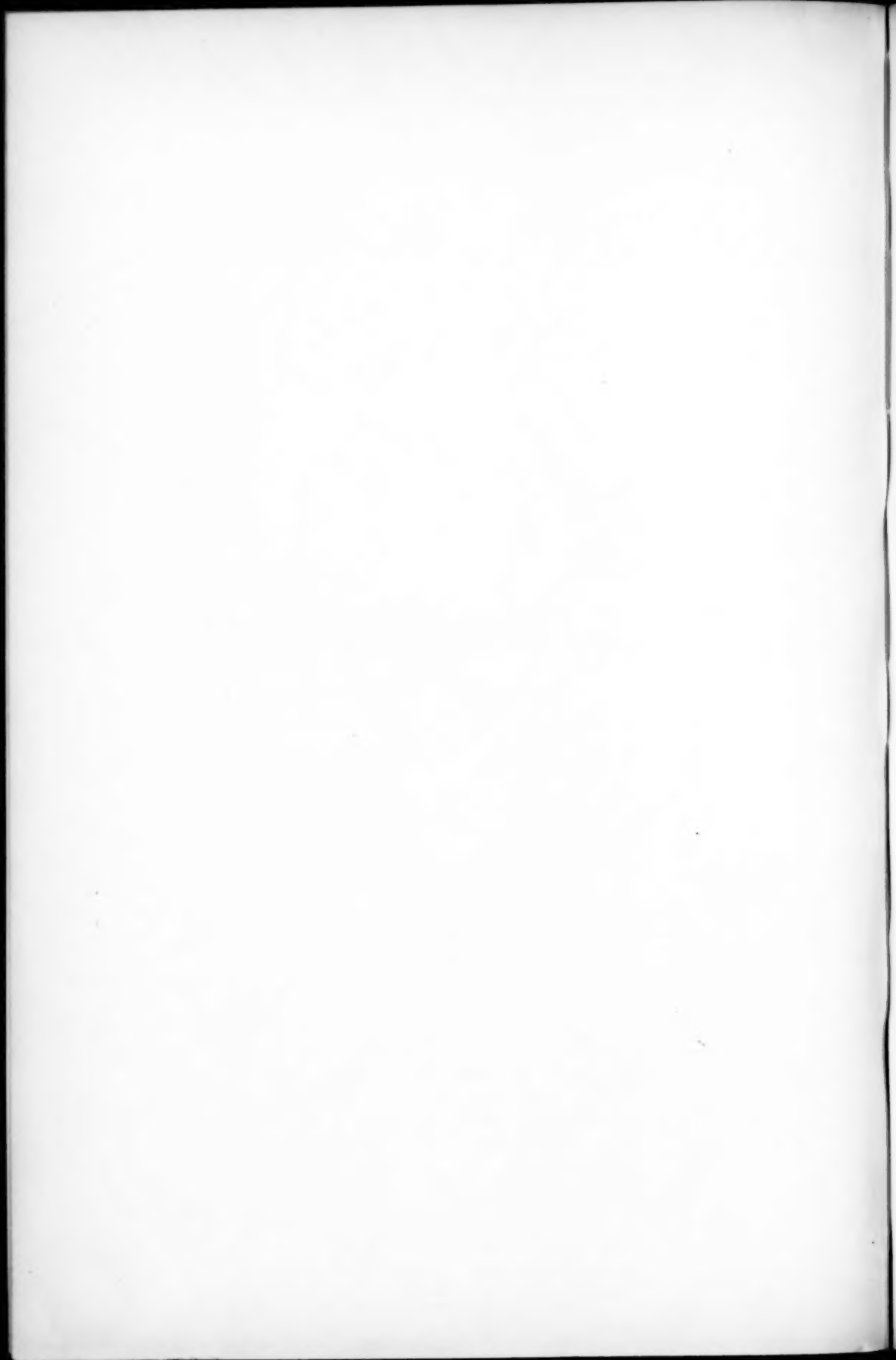
Thus, after a struggle which had last for nearly three centuries, the merits of the martyr of Saragossa at last received their due acknowledgment.

¹ Dominici Bartolini *Commentarium Actorum Omnium Canonizationis*, etc. Romæ, 1868, T. I., pp. 17, 23, 31, 32, 62, 67, 71, 91-4.

² *Ibid.*, I., 133-9, 226-65, 491; II., 275 *sqq.*, 318.



A REPLY TO DR. STILLÉ UPON RELIGIOUS
LIBERTY IN VIRGINIA



A REPLY TO DR. STILLÉ UPON RELIGIOUS LIBERTY IN VIRGINIA.

BY HON. WILLIAM WIRT HENRY.

At the meeting of the Association held in this city in April, 1886, I had the honor to read a paper upon the part taken by Patrick Henry in the insertion of the principle of religious liberty into the constitutions of Virginia and the United States. After showing that religious liberty, as now understood and enjoyed in America, involved the complete separation of Church and State, which had been provided in none of the American Charters, I said that Virginia, by her Bill of Rights adopted the 12th of June, 1776, was "the first State in the history of the world to pronounce the decree of absolute divorce between Church and State, and lay as the chief corner-stone of her fabric of government the precious stone of religious liberty, which had been rejected by the builders."

In a paper read at the May meeting, 1887, Dr. Stillé has contested this claim, and insisted that this honor belongs to Pennsylvania. He claimed that her constitution, though framed after that of Virginia, stated the principle of religious liberty more fully, in fact, "in its fullest meaning and application"; while the definition of religious liberty in the Virginia Bill of Rights was "very meagre and incomplete, compared with the principle as it has been understood and practised in this country under legal sanctions during the past century." He further held that the Virginia Bill of Rights was no part of her constitution. He said: "It is to be observed that a Bill of Rights is not in itself a law, but is merely a declaration of what the law on

a given subject ought to be, when the statute concerning it shall be subsequently enacted. It does not repeal old statutes nor make new ones, and until a change is made the old law remains in force."

This statement of the force of a Bill of Rights is in direct conflict with the decisions of the Virginia Court of Appeals on the subject. The question of the force of the constitution, including the Bill of Rights, first arose in the case of *Kemper vs. Hawkins*, decided in 1793, and reported in "*Virginia Cases*," I., p. 20, etc., in which the General Court held that the Bill of Rights was a part of the constitution, and as such was the supreme law of the State, and that all statutes contrary to its provisions were null and void. I need only quote from the opinion of one of the judges, the learned St. George Tucker. At page 79 he says: "That the constitution is a rule to all departments of government may, I think, be proved by reference to a few parts of it. The Bill of Rights provides"—(He then cites secs. 8, 9, and 10, and shows that they are in force without legislation, and adds): "Art. 16 secures the free exercise of our religious duties, according to the dictates of every man's conscience; should the legislature at any future period establish any particular mode of worship and enact any penal law to support it, will the courts of this commonwealth be bound to enforce those penalties?" And he gives a negative answer.

The doctrine of the utter destruction of the regal government by the act of independence, except in the laws specially retained, is clearly laid down by the judges in this case, which has been followed since as leading authority in that State, and in all other American courts. The legislature of Virginia has also uniformly recognized the doctrine that the Bill of Rights is the supreme law of the land, rendering void all statutes in conflict. Only one instance need be cited.

An act was passed 24th January, 1799 (Rev. Code of 1819, Vol. I., p. 78), which reads as follows: "Whereas the Constitution of the State of Virginia hath pronounced the

government of the King of England to have been totally dissolved by the Revolution ; hath substituted in place of the civil government so dissolved a new civil government, and hath in the Bill of Rights excepted from the powers given to the substituted government the power of reviving any species of ecclesiastical or church government in lieu of that so dissolved, by referring the subject of religion to conscience ; and whereas the said several acts presently recited, do admit the church established under the regal government to have continued so subsequently to the constitution ; have bestowed property on that church, have asserted a legislative right to establish any religious sect ; and have incorporated religious sects, all of which is inconsistent with the principles of the constitution, and of religious freedom ; and manifestly tends to the re-establishment of a national church :

“ For prevention thereof, Be it enacted, that the several laws, the titles whereof are as follows: ‘ An Act for Exempting the Different Societies of Dissenters from Contributing to the Support and Maintenance of the Church as by Law Established, and its Ministers, and for Other Purposes Therein Mentioned ’ ; ‘ An Act to Repeal so Much of the Act for the Support of the Clergy and for the Regular Collecting and Paying the Parish Levies, as Relates to the Payment of the Salaries Heretofore Given to the Clergy of the Church of England ’ ; ‘ An Act for Incorporating the Protestant Episcopal Church ’ ; ‘ An Act to Authorize the Election of Certain Vestries ’ ; ‘ An Act to Repeal the Act for Incorporating the Protestant Episcopal Church, and for Other Purposes ’ ; and ‘ An Act for Giving Certain Powers to the Trustees of the Property of the Protestant Episcopal Church ’ ; be and the same are hereby repealed and declared to be void and of none effect. And it is further declared that the law entitled, ‘ An Act for Establishing Religious Freedom,’ is a true exposition of the principles of the Bill of Rights and Constitution.”

All of the acts so repealed had been passed subsequent to the adoption of the Bill of Rights, and the last two subse-

quent to 1785, when Mr. Jefferson's bill was enacted. They were now repealed because inconsistent with the 16th section of the Bill of Rights, which, "by referring the subject of religion to conscience," had excepted from the powers granted to the government any control over the subject; and had thus wrought a complete separation between Church and State. The legislature of 1799 declared that previous legislatures had overlooked this great fact in passing the acts thereby repealed. But such legislation did not alter the fundamental law of the land; on the contrary, it was itself void and of no effect. In the paper which I read the fact is stated, that until the year 1799 the great principle involved in the 16th section of the Bill of Rights was not fully recognized in Virginia, and the act given above was referred to by me as evidence of this. It is also evidence of the fact, stated in my address, that the principle of religious liberty, as now held in Virginia, was based on that section of the Bill of Rights. The act cited expressly so stated, and that Mr. Jefferson's bill is but a true exposition of the principle so embodied in the fundamental law of the State, not the introduction of a new or different principle.

It follows, therefore, that the Virginia Bill of Rights was as much a part of her constitution as the Pennsylvania Bill of Rights was of her constitution, of which it expressly formed a part. And the effect of the two constitutions on the previous and subsequent laws of the several States was the same, rendering null and void all acts inconsistent therewith. It also follows that the principle of religious liberty as now understood, involving the absolute divorce of Church and State, was inserted in the Virginia paper, and was in full force from its date, though the legislature did not at first clearly recognize it.

But so far as regards Pennsylvania, claimed by Dr. Stillé as the pioneer in placing "the most sacred of all social rights—the right of religious liberty—under the sanction and guaranty of the fundamental constitution of the State," it appears by reference to her constitutions that she has

never yet embodied in them the principle of religious liberty in its fulness, as has been done in Virginia.

The section of the Virginia Bill of Rights under discussion reads as follows:

"Religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence, and therefore all men are equally entitled to the free exercise of religion according to the dictates of conscience."

Mr. Jefferson's act, which the Virginia legislature declared was the true exposition of this section, was as follows:

"No man shall be compelled to frequent or support any religious worship or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or effect, their civil capacities."

It is impossible to conceive of fuller religious liberty, or a more absolute divorce of Church and State. By this principle, all citizens, regardless of their religious belief, or their want of religious belief, whether Christians, Jews or Pagans, infidels or atheists, are granted equal civil rights. The State is not permitted to take any cognizance of the religious beliefs of her citizens in the administration of government, nor in any way to curb their expression. The only exception is that stated in the preamble of the act: "when principles break out into overt acts against peace and good order."

Put beside this the section in the Pennsylvania constitution of 1776, adopted after that of Virginia, and relied on by Dr. Stillé as a fuller expression of the principle.

It reads as follows: "That all men have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences and understanding, and that no man ought or of right can be compelled to attend

any religious worship, or erect or support any place of worship, or maintain any ministry, contrary to or against his free will and consent ; nor can any man, who acknowledges the being of a God, be justly deprived or abridged of any civil right as a citizen on account of his religious sentiment or peculiar mode of worship ; and that no authority can or ought to be vested in, or assumed by any person whatever, that shall in any case interfere with, or in any manner contract, the right of conscience in the free exercise of religious worship."

Under this provision an atheist who does not "acknowledge the being of a God" may "be deprived or abridged of any (or every) civil right as a citizen," and therefore by it the State of Pennsylvania claimed the right to distinguish between the religious beliefs of her citizens, and deprive one class of civil rights. Nor have later constitutions of Pennsylvania broadened the principle. On the contrary, they have narrowed it. In that adopted in 1790, in Article IX., after asserting that "All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences," etc., a section is added in the following words: "That no person who acknowledges the being of a God and a future state of rewards and punishments shall on account of his religious sentiments be disqualified to hold office or place of trust or profit under this commonwealth."

This section has been continued in subsequent constitutions. It admits a power in the legislature to require as a qualification for office not only a belief in a God, but a belief in a future state of rewards and punishments :

These constitutions have not repealed the act of 1700, which made it penal "to wilfully, premeditatedly, and despitefully blaspheme or speak lightly and profanely of Almighty God, Christ Jesus, the Holy Spirit or the Scriptures of Truth," as was held by the supreme court of the State in the case of *Updegraph vs. The Commonwealth*, decided in 1824 and reported in 11 *Sergeant & Rawles*, page 394.

This case arose upon words spoken in a public debate derogatory of the Holy Scriptures; the inspiration of which was under discussion. In it the court declared that Christianity was a part of the common law of Pennsylvania, at least to the extent of the admission of its divine origin and truth. This was also subsequently held by the Supreme Court in the celebrated Girard College case.

This review of the discussion of Dr. Stillé, it is submitted, establishes the fact, that though some slight connection between Church and State was kept up for a while in Virginia, after the adoption of her Bill of Rights on 12th June, 1776, yet such connection was in conflict with the principles of that portion of her constitution, and was so declared afterwards. And that instrument was so construed as to effect the complete divorce of Church and State, while the inconsistent legislation was pronounced null and void. And further that so far from Pennsylvania antedating Virginia in the insertion of this great principle into her constitution, she has never to this day adopted that principle "in its fullest meaning and application," as it is held in Virginia.

The principle as expounded in Virginia in Mr. Jefferson's bill and its elaborate preamble is not antagonistic to Christianity, as some suppose. On the contrary it is in accordance with the teaching of its Divine Author. That celebrated bill was but the embodiment of the Presbyterian and Baptist memorials previously addressed to the Virginia legislature, and both of these denominations urged its passage. Hanover Presbytery in 1776 clearly stated the true position of Christianity in their memorial, written by Rev. Caleb Wallace, a Princeton graduate. They said: "We conceive that when our blessed Saviour declares his kingdom is not of this world, he renounces all dependence on State power, and as his weapons are spiritual, and were only designed to have influence on the judgment and heart of man, we are persuaded that if mankind were left in quiet possession of their unalienable rights and privileges, Christianity as in the days of the Apostles, would continue to prevail and flourish

in the greatest purity, by its own native excellence, and under the all-disposing providence of God."

The Virginia doctrine of religious liberty recognizes the fact that the Divine Author of Christianity has fully endowed it, as he has endowed all truth, with the power of self-preservation. Pure Christianity asks nothing of civil government but to be let alone, and it will be content with nothing less.

AMERICAN TRADE REGULATIONS BEFORE 1789



AMERICAN TRADE REGULATIONS BEFORE 1789.¹

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Mr. Gladstone, we are learning, was mistaken in his well-known characterization of the American Constitution. That instrument was not "struck off at a given time by the brain and purpose of man," but was a growth, the product of centuries of experience on both sides of the ocean. In the early constitution of the States many of its principles had already been committed to writing. Just as little did our national tariff system come suddenly into being in 1789. It, too, has a history running back into colonial and early English times. The present brief essay, however, assumes all that important and interesting progress which antedates

¹ This paper by no means professes to be an exhaustive treatment of so great a subject. It, very briefly, presents the results of investigation in books contained in the Cornell University Library. Most of the works employed will easily be recognized from the titles by which they are cited in the foot-notes. In many cases, however, it has been necessary to shorten in an arbitrary way the ponderous titles, and as some of these works are no longer popular, the following explanations are necessary:

"The Acts and Laws of his Majesty's Province of New Hampshire in New England," is cited as *Laws of New Hampshire*.

"The Acts of the General Assembly of the Province of New Jersey from the time of the surrender of the Government in the second year of the reign of Queen Anne to the present time, being the twenty-fifth year of the reign of King George the Second," is cited as *Acts of the Gen. Assy. of N. J., I.*

"Acts of the General Assembly of the Province of New Jersey from the surrender of the Government to Queen Anne on the 17th day of April, in the year of Our Lord 1702, to the 14th day of January, 1776," is cited as *Acts of Gen. Assy. of N. J., II.*

"Acts of the Council and General Assembly of the State of New Jersey from the Establishment of the present Government and the Declaration of Inde-

the colonization of this continent, and deals, for the most part in a general way, with such trade regulations as emanated from the local legislatures of America. Although this neglected subject can here be only outlined, the facts presented may, perhaps, be taken as typical of the whole: they are gathered from the records and statute-books of colonies with widely different interests.

So great were the number and the variety of the colonial regulations, that some sort of grouping or classification must be attempted. According as trade regulations tend to promote or to retard importation, or to promote or to retard exportation, they seem naturally to fall into four classes, of which the simplest and clearest types are: bounties on imports, duties on imports, bounties on exports, and duties on exports. Such a classification, it is true, has its difficulties. Bounties or duties may bear indirectly on trade; the real character of a regulation may not at all appear on its face; conflicting provisions may be united and balanced in the same act; tonnage must be distinguished from ordinary import duties; and drawbacks are radically different from simple export bounties. But, on the whole, in spite of these and other limitations, the above classification is best adapted to bring order out of confusion, and will therefore be followed.

pendence to the end of the first sitting of the eighth session on the 24th day of December, 1783," is cited as Acts of Coun. and Gen. Assy. of N. J.

"The Acts of the General Assembly of the Commonwealth of Pennsylvania carefully Compared with the originals," is cited as Acts of Gen. Assy. of Penn.

"Laws of the Commonwealth of Pennsylvania from the 14th day of Oct., 1700, to the 20th day of March, 1810," is cited as Laws of Penn.

"Laws of the State of Delaware from the 14th day of Oct., 1700, to the 18th day of August, 1797," is cited as Laws of Del.

"Laws of Maryland at Large with proper Indexes," is cited as Bacon's Laws of Md.

"Laws of Maryland made since 1763," is cited as Hanson's Laws of Md.

"A complete Revisal of all the Acts of the Assembly of the Province of North Carolina now in force and use," is cited as Laws of N. C.

"Laws of the State of North Carolina published according to Act of Assembly by James Iredell," is cited as Iredell's Laws of N. C.

"Acts and Laws of his Majesty's Colony of Connecticut in New England in America," is cited as Laws of Conn.

Regulations of the first class—that is, bounties or other stimulants to importation—are, it is true, found in the colonial legislation; and their necessity for the Federal government, urged by Hamilton in his famous letter to James Duane, seems ultimately to have been recognized by the Constitution.¹ Yet, in practice, they were rarely granted, and were limited to a few such articles as might at the particular time be urgently needed in America, notably, military supplies, salt, and slaves, or white servants. Reasons are not hard to find. When, as was very often the case in those days, the importer was also the consumer, it was more evidently unwise and needless to give a bounty for importation. Moreover, most of the advantages attainable through import bounties would also follow in some degree from prohibitions or duties on exportation; and in the latter form the regulation would call for no direct expense, if, indeed, it were not a source of revenue. Accordingly, but few unconditioned grants of money were made to importers. Virginia at times remitted her export duty on tobacco to such as would import salt or negroes²; Rhode Island, in 1777, granted a bounty of one shilling a bushel on all salt imported within a year, provided the State was given the refusal of it³; Maryland quite often encouraged importation by bounties and other indulgences⁴; and, amid the difficulties of the Revolution, Congress repeatedly passed measures of the same general nature.⁵ By a South Carolina act of 1716 a bounty of from £22 to £30 per capita on imported servants was granted unconditionally⁶; but in June of the next year this high premium was withdrawn.

¹ "Annals of the First Congress," vol. i., 153, 154, etc.

² Hening's "Statutes at Large; being a collection of all the Laws of Virginia from the first session of the Legislature in the year 1619," i., 540; x., 150; etc.

³ "Records of the Colony of Rhode Island and Providence Plantations in New England," viii., 239.

⁴ Bacon's "Laws of Md.," c. 2 of April, 1671; c. 2 of June, 1676; c. 52 of June, 1692; Hanson's "Laws of Md.," c. 20 of October, 1780.

⁵ "Journals of the American Congress from 1774 to 1788," vol. i., 118, 218, 262, etc.

⁶ Cooper's "Statutes at Large of South Carolina," ii., 646.

A peculiar reward for the importation of specie is found in some of the colonial tariff laws. By an act of August 8, 1729,¹ Maryland importers were allowed an abatement of 15 per cent. on duties paid with gold or silver coin of their own importation; again, as late as 1784, a similar allowance of 10 per cent. was made.² This outcome of the balance-of-trade criterion of national prosperity, seems never to have gained a foothold in most of the other colonies, but it is found in the Massachusetts laws of the state period³; and it formed a regular part of the Virginia customs laws from 1705 till 1781, and within this time such rebates of from 10 per cent. to 25 per cent. of the whole duty were granted a score of times.⁴ In her latest and most comprehensive tariffs, however, Virginia inserted no such provisions.

For an increase of exports, legislators relied not so much upon direct bounties for exportation as upon bounties and other aids to production. Even England, usually so slow to support American industry, gave rewards for the production of timber, tar, pitch, potashes, flax, hemp, silk, wine, yards and masts, fish, rice, and tobacco. This list is noteworthy in several respects. Under the existing prohibitions on colonial manufactures, a good part of the articles would seek a market in England; others were necessary to the naval supremacy of the same country; and all were such that it was hoped their production would divert the industrial energy of the colonies from manufacturing.⁵

Among the colonies themselves there were the greatest differences in the zeal with which this generous maternal example was followed. In all, the same general policy was accepted; the means employed were various. Aside from the usual method of granting pecuniary bounties proportional to the amount of the product, prizes were offered

¹ Bacon's "Laws of Md.," c. 15 of August, 1729.

² Hanson's "Laws of Md.," c. 84 of November, 1784.

³ *Quarterly Journal of Economics*, ii., 481.

⁴ Hening's "Statutes of Va.," iii., 229; iv., 143, 276, 310, 317; x., 501; etc.

⁵ Bishop's "A History of American Manufactures from 1608 to 1860" (2 vols.: Philadelphia, 1861), i., 328, 329.

for the first or the best produced ;¹ taxes were remitted to manufacturers ; monopolies of the market were given for limited times ; lands were granted ; bills of credit and loans were issued to the projectors of mills ; producers were exempted from military duty ; certain articles were either made receivable for taxes or were constituted general legal tender ; and in many cases the declared purpose was to promote domestic production.² The branches of industry thus helped by the colonial governments were not only those engaged in the production of raw materials and naval supplies, but also manufactures, as of salt, powder, fire-arms, iron, linens, cottons, and woollens.

In the years preceding the Revolution there was an unmistakable falling off in the number and amount of these rewards for production. For this movement repealing acts suggest two reasons, apparently opposite, but possibly both due to a rising feeling that governmental direction of industry, so far as it was at all advisable, should take some other form. The records of Rhode Island for 1751, after reciting that the bounty on woollen goods "may draw the displeasure of Great Britain upon us, as it will interfere with their most favorite manufactory," state that the bounty on flax and the fishery has been tried and not found beneficial.³ In South Carolina, on the other hand, it was more than once declared that the reason for the repeal was the sufficient attainment of the end proposed.⁴ The influence of British opposition to colonial manufactures must be admitted, but that it was not the chief cause of the withdrawal of bounties appears from the fact that after the Declaration of Independence, when British preferences were no longer regarded, this class of regulations failed to regain its former prevalence.

¹ Hening's "St. of Va.," i., 487, 521.

² "Rec. of R. I.," v., 318 ; "Laws of N. H.," 141 ; "Records of the Governor and Company of the Massachusetts Bay in New England, iv., part i., 137 ; Iredell's "Laws of N. C.," 644 ; "Grants Concessions and Original Constitutions of N. J.," 118 ; "Acts of the Council and Gen. Ass'y of N. J.," 17, 20, 29, 33, 53 ; "Laws of N. H.," 32 ; Cooper's "St. of S. C.," ii., 37.

³ "Rec. of R. I.," v., 319. ⁴ Cooper's "St. of S. C.," iii., 670 ; iv., 428.

Drawbacks were not allowed in the earliest colonial tariffs, and when they were introduced, it was in a somewhat different form from that which they afterward assumed. One of the first was in the Massachusetts act of 1668,¹ wherein the amount of the drawback was only one half of the original duty, but the time within which the goods must be reexported was unlimited. There was also the curious provision that a part of the import duty, one half in most cases, should be remitted on condition that in no event thereafter was a drawback to be claimed. In South Carolina, before any general tariff was in force, the whole duty on liquors was to be refunded if they were reexported within six months.² Within the next twenty-five years the South Carolina drawbacks became fixed, after some variations,³ at three fourths of the duty on all goods exported again in six months.⁴ In the act of 1787 occurred a provision whereby goods intended for reexportation might be bonded and so pay no duty. Virginia, too, at first allowed but three fourths of the duty by way of drawback, and that only on liquors and slaves exported within six weeks⁵; but in 1726 the amount was made equal to the whole duty, and the time extended to three months.⁶ By 1730 it was the rule to repay the whole duty on goods exported within six months,⁷ and, except in the case of special imports, as slaves (twelve months) and horses (three months),⁸ these terms were maintained throughout the colonial period.⁹ After the establishment of the state government in Virginia, drawbacks were less common, and by the important act of 1786 they were very closely restricted. None were allowed,

¹ "Rec. of Mass.," iv., part 2, 410.

² Cooper's "St. of S. C.," ii., 96, 125.

³ Cooper's "St. of S. C.," ii., 125, 200.

⁴ Cooper's "St. of S. C.," ii., 649; iii., 56, 159, 556.

⁵ Hening's "St. of Va.," iii., 212.

⁶ Hening's "St. of Va.," iv., 143.

⁷ Hening's "St. of Va.," iv., 276.

⁸ Hening's "St. of Va.," iv., 317, 394; v., 28, 160; vi., 124, 217, 353; vii., 281; viii., 190.

⁹ Hening's "St. of Va.," iv., 310, 393; v., 26, 310; vi., 193, 222, 354; vii., 133, 265; viii., 38, 190, 335, 529.

unless within sixty days of importation the goods in the same unbroken packages were reexported by the original importer by water and in the same vessel in which they came, or in a vessel belonging to citizens of the United States. Under these circumstances, if within three months of exportation the exporter made application for the drawback, and within six months furnished proof that the goods were not relanded in Virginia, the whole of the duty was to be repaid, provided it was as much as £50. By many of the acts taxing imported slaves, the same rebate was allowed in case of death within forty days.¹ In most of the other colonies the drawback presents little else that is noteworthy; indeed in the non-commercial colonies of New Jersey, Delaware, and North Carolina it seems rarely to have been allowed.

Although the drawback had in some measure gained acceptance in the more important of the colonies, the name does not once occur in the Journal of the Continental Congress in connection with the import resolution of 1781, nor could the Northern members secure its insertion in the proposed Continental tariff of 1783.² The delegates from the South asserted that such a measure would be an undue burden on their constituents, and that along so extensive a seaboard it would be liable to the grossest abuses. In the debates upon the first tariff under the Federal Constitution, the propriety of the drawback appears to have been recognized; and an attempt to extend the principle so as to allow a rebate on rum, the product of imported molasses, although finally defeated, was at first in a fair way to succeed.³ An even wider range was in fact given the drawback in the customs act passed in the summer of 1789 by the as yet independent state of Rhode Island.⁴

Inasmuch as export duties were not an object of expenditure but a source of revenue, and were, moreover, considered a just and easy method of taxation,⁵ they were quite

¹ Henning's "St. of Va.," vi., 217, 353; vii., 281; viii., 190.

² "Journals of Amer. Cong.," iv., 174.

³ "Annals of 1st Cong.," i., 180-182, 240.

⁴ "Rec. of R. I.," x., 340.

⁵ Henning's "St. of Va.," ii., 130, 133.

generally resorted to, even where, as in New Jersey, imports were rarely taxed. But the effect of such duties is so burdensome to trade that the rates were, as a rule, quite low. In Virginia the duty on tobacco ranged from two shillings to ten shillings a hogshead of five hundred pounds, but was most often at two shillings; in Maryland the same article was variously taxed at from three pence to two shillings a hogshead, while other exports were rated proportionately. Tobacco, hides, skins, furs, boards, and timber were the most common objects of export duties, but each colony had its own peculiar lists. Thus at various times Virginia taxed tobacco, hides, skins, furs, wool, and iron; Connecticut, timber and staves; New Jersey, staves and many other products of her forests; Canada, skins and furs; South Carolina, leather, furs, skins, Indian slaves, and timber; Maryland constantly taxed tobacco, and at times furs, skins, beef, pork, bacon, iron, flour, wheat, and all European goods.¹ This power to tax exports, however freely exercised by the separate states, was too dangerous to be entrusted to the central government. Advocates of strong Federal authority, such as Hamilton, and practical financiers, as Robert Morris, sought in vain to invest Congress with the same right.² The exporting states of Virginia, Rhode Island, and Pennsylvania wished to retain for themselves the power to tax exports,³ but above all were unwilling to give it up to the general government. It was only after much debate, that an agreement was reached on this point in the Convention of 1787.⁴ Indeed, the final

¹ Hening's "St. of Va.," i., 469, 540; ii., 130, 466; iii., 53; vi., 91; vii., 69, 331; ix., 349; xi., 95, 196; xii., 288. "Acts and Laws of His Majesty's Colony of Conn. in New England in America," 238. "Acts of Gen. Ass'y of N. J., I," 15, 285; "Acts of Council and Gen. Ass'y. of N. J.," 331. Smith's "History of Canada," Appendix. Cooper's "St. of S. C.," ii., 64, 110, 200, 649; iii., 159, 193. Bacon's "Laws of Maryland," c. 2 of 1638, c. 2 of 1642, etc., c. 23 of 1694, c. 24 of 1695, c. 27 of 1704; Hanson's "Laws of Md." c. 8 of June, 1780, c. 84 of Nov., 1784.

² "The Works of Alexander Hamilton" (3 vols., New York MDCCCLII), i., 158; "The Papers of James Madison" (3 vols., Mobile, 1842), i., 378.

³ Elliot's "Debates" (Lippincott's ed. of 1876), iii., 481-483.

⁴ Elliot's "Debates," i., 245-255. "Madison Papers," iii., 1388.

prohibition was carried against the votes of Pennsylvania, Delaware, New Jersey, and New Hampshire.

For this prohibition Jefferson suggested the most widely accepted reason. He held that some such provision was necessary in order to secure the adhesion of the great agricultural states of the South. But this is the immediate reason, and it, in turn, needs explanation.¹ Madison mentions the impossibility of making export duties proportional to the ability to pay, since, as he thought, some of the most wealthy states would escape the burden of such a tax.² Another argument against export duties has the sanction of the Continental Congress: export duties increase the cost of putting products before the foreign consumer, and so limit exportation. But as exports and imports are equal, whatever diminishes exports cuts off importation and destroys commercial prosperity.³ Still other explanations might be presented. The gradual falling off in the frequency of such taxes in the years just past might indicate a stronger feeling against governmental regulation of trade. Again, the duties had apparently, in most cases, and professedly in some, been levied for the revenue alone⁴; and under one uniform and comprehensive system it was expected that the rate of import duties would be materially increased, and their product made adequate to the ordinary needs of government.⁵ Hence export duties would no longer be necessary, and a power which was useless, if not a positively dangerous, might well be denied to Congress.

The essential character of the colonial inspection laws might be inferred from the general name. All agreed in

¹ "The Writings of Thomas Jefferson" (9 vols., Philadelphia, 1869), vi., 483.

² "Letters and Other Writings of James Madison, Fourth President of the United States" (9 vols., Philadelphia, 1867), iii., 640.

³ "Journals of Amer. Cong.," iv., 200, 201. See also "Madison Papers," ii., 1080.

⁴ Hening's "St. of Va.," ii., 130, 133; vi., 193.

⁵ *Federalist*, No. xii.; Elliot's "Debates," ii., 42, 64, 76, 102, 193, 266, 343, 467, etc.

requiring the commodities included within their scope to undergo examination at the hands of official inspectors, and in establishing fees; but they exhibit radical differences of detail as to the articles inspected, the amount of the fee, and the character and extent of the inspectors' functions. The articles included, like those subjected to export duties, were naturally among the staple products of the colonies. Thus, for example, New Hampshire inspected, among other things, her fish; Virginia and South Carolina, their tobacco; North Carolina, pitch, tar, and tobacco; and New Jersey, timber and provisions.¹ In some cases the inspection consisted in measurement,² in other cases in determining and indicating the quality, and in packing.³ The fee of Virginia inspectors of tobacco was in 1783 as high as 6s. a hogshead, although at the same time an export duty of 4s. was in force.⁴ South Carolina at this time gave her inspectors of the same commodity a fee not far different; and twenty years earlier Maryland laws allowed a fee of approximately 5 per cent.⁵ In general, however, the rate was much lower, and in some instances it was almost nominal: 1*d.* per cask on flour; 2*d.* per barrel on pitch, and 1*d.* per barrel on tar; 4*d.* per barrel on provisions; 6*d.* per barrel on beef and pork.⁶ In at least one case the inspection was not required except on demand of the buyer or the seller, and the fee was then to be paid one half by each.⁷ In some states imported goods were also subjected to inspection.⁸ On the whole, this supervision of exports, intended to raise the reputation of the commodities in the

¹ "Laws of N. H.," 150; Hening's "St. of Va.," xi., 205; Cooper's "St. of S. C.," iv., 604, 681; "Laws of N. C.," 168, 207, 218; "Acts of Gen. Assy. of N. J., II.," 381, 384.

² "Laws of N. H.," 150.

³ Cooper's "St. of S. C.," ii., 157; iv., 604, Etc.

⁴ Hening's "St. of Va.," xi., 196, 205.

⁵ Cooper's "St. of S. C.," iv., 604, 681; Bacon's "Laws of Md.," c. 18 of Nov., 1763.

⁶ "Acts of Gen. Assy. of N. J., II.," 381; "Laws of N. C.," 457; "Laws of Conn.," 19; Cooper's "St. of S. C.," ii., 157.

⁷ "Acts of Gen. Assy. of N. J., II.," 381.

⁸ "Laws of N. H.," 150; "Laws of Penn.," ii., 350.

foreign market, increased in frequency and extent during the state period, and it was, perhaps, because of this and its moderate and beneficial use, that it was allowed to remain with the states under the Federal Constitution. The wide acceptance of inspection laws and the height to which the fee sometimes rose, constitute this an important class of trade regulations.

Where the means already described were so freely employed to direct and to check commerce, it was quite natural to go one step further and to prohibit absolutely exportation or importation.¹ Prohibitions upon exportation, or embargoes, were at first by far the more common, although, as a rule, upon some one article or class of articles, and of short duration. Very naturally, too, staples or necessities were most often the objects of these prohibitions. Grain, flour, meats of several kinds, salt, and, in time of actual or prospective war, military supplies accordingly embrace nearly all the articles usually included in the embargo,² although by no means all that were ever prohibited.³

In the earlier years of colonial life, before the settlements became established and supplied with reliable means of subsistence, scarcity more often led legislators to check exportation; but after agriculture and the fisheries began to flourish, and means of communication and transportation improved, the necessity for such restrictions was felt only when an unusually poor harvest, an Indian or inter-colonial war, or a speculator's corner disturbed the normal state of affairs.⁴ The graver disturbance of the French and Indian

¹ In Va.: Henning's "St. of Va.," i., 227, 347, etc.; iii., 185, 200; iv., 221; vi., 553, etc.; ix., 385, 530, 533; x., 105, 140, 306, 376, 423, Etc., etc. In other colonies nearly as many.

² "Acts of Council and Assy. of N. J.," 8, 25, 100, Etc. Cooper's "St. of S. C.," ii., 346.

³ Cooper's "St. of S. C.," ii., 627. Bacon's "Laws of Md.," c. 17 of Oct., 1663; c. 6 of Sept., 1681. Iredell's "Laws of N. C.," 628. Cooper's "St. of S. C.," iv., 376, 480, 507.

⁴ The greater freedom of the later colonial statute-books from embargo acts is partly explained by the numerous concessions to the Executive of power to meet any emergency by proclaiming an embargo. But, on the whole, a more reasonable explanation is found in the firmer establishment of industries and the improved communication by coasters and otherwise.

war again brought into vogue the former practices, and with the outbreak of the Revolution embargoes became more frequent than ever before. Importation as well as exportation was forbidden, even where such measures had hitherto been rarely taken.¹ Congress and the states for a time worked in harmony.² Even Rhode Island, whose policy in reference to the impost resolutions of 1781 and 1783 was so obstinately selfish, laid embargoes at the request of Congress, and in November, 1776, recommended to the other New England states a combination to make the prohibition more effective.³ When, however, the crisis of the war seemed safely passed, there came a second and final abatement in the frequency of these violent measures. It is to be noted that, whereas in the earlier years the duration of the embargoes was very short, six months, three months, or even less, in the later colonial and the state period there was a tendency to make their continuance permanent or dependent on some future event.

The fourth class of trade regulations, or those which bear upon imports, are of greater practical interest. For not only did fees of various kinds, tonnage, and other sorts of import duties constitute the most powerful means of directing the course of commerce, and, on the whole, the most productive source of indirect revenue, but these regulations have survived their early contemporaries, and come down into our present system.

Duties bearing upon importation first appeared in the form of tonnage, or "castle duties," or "powder money." These taxes were at first levied and payable in powder or ammunition⁴; and it was sometimes by custom,⁵ sometimes by virtue of an option expressly granted in the acts,⁶ that

¹ "Acts of Coun. and Gen. Assy. of N. J.," 241; "Journ. of Amer. Cong.," i., 15; etc. ² Except Delaware, "Madison Papers," i., 86.

³ "Records of R. I.," viii., 53, 618.

⁴ Henning's "St. of Va.," i., 176, 192; Cooper's "St. of S. C.," ii., 20, etc.; "Laws of N. H.," 64; "Rec. of R. I.," iii., 277.

⁵ Bacon's "Laws of Md.," c. 17 of June, 1692.

⁶ Henning's "St. of Va.," ii., 134, 466; "Rec. of Mass.," iv., part 2, 331; "Rec. of R. I.," iii., 487; Cooper's "St. of S. C.," ii., 42, 82.

they were changed to a money equivalent. The date of this change, which was made to relieve shipmasters from the inconvenience of carrying gunpowder and leaden shot,¹ varied considerably. In Massachusetts the transition was effected by 1679, and in Maryland by 1692; but in South Carolina the old powder duty of half a pound per ton was levied as late as 1741.² The reason for the tax in kind and the names by which it is called in the early records appears from the fact that not only was the product in its earlier form turned over directly to the "castle" or port fortifications, but in its later commuted form it was for some time kept a distinct fund for the support of forts.³ Afterward the same revenues were specially appropriated to the support of light-houses,⁴ and it was not till late in the colonial history that tonnage duties were merged in the general revenues.

There is so much discord and irregularity in the provisions of the different states that the occasional instances of harmony seem the result rather of accident than of design. First, there were local differences. Such non-commercial states as New Jersey, Delaware, and North Carolina, were, naturally, little concerned with tonnage; while Virginia, Massachusetts, Rhode Island, South Carolina, and Maryland made it a constant care. In the second place, the minimum size of the taxed vessels was not the same.⁵ The rate per ton seems at first sight to have varied within narrower limits. Thus at about 1680, Virginia had settled upon 15*d.* per ton; Massachusetts on 12*d.*; Rhode Island, the same; South Carolina, 15*d.*; and Maryland,

¹ "Rec. of R. I.," iii., 487.

² "Rec. of Mass.," v., 242; Bacon's "Laws of Md.," c. 17 of June, 1692; Cooper's "St. of S. C.," iii., 588.

³ Hening's "St. of Va.," i., 176, 192, etc.. "Rec. of Mass.," ii., 132; iv., part 2, 331; v., 242. "Rec. of R. I.," iii., 277, 487. "Laws of N. C.," 7. "Laws of Conn.," 194.

⁴ Hening's "St. of Va.," xii., 304. "The Public Records of the Colony of Connecticut," xi. "Rec. of R. I.," v., 472; ix., 701.

⁵ Thirty tons in N. H.,—"Laws of N. H.," 64; 20 tons in Mass.,—"Rec. of Mass.," iv., part 2, 331; 10 tons in R. I. and Conn.,—"Rec. of R. I.," iii., 277; "Laws of Conn.," 194.

14*d*.¹ But this apparent harmony was not permanently maintained; and, even for the time being, is made of little significance by the fact that there were also governor's and port officers' fees, pilotage, lighterage, and dockage charges, and specific amounts levied per vessel in addition to the rate per ton, with all of which the colonial legislators knew how to burden shipping. As long as the duty was paid in ammunition, a further source of confusion was present in the different prices of powder and shot. For example, at about 1700, in South Carolina the half pound of powder might be commuted at 2*s*.; in New Hampshire a whole pound was considered worth 2*s*.; while in Rhode Island the duty was one pound or 1*s*.

It is not, however, to be supposed that there are absolutely no traces of concerted action. It can scarcely be an accident that for several years after 1661 the tonnage of Virginia and of Maryland should coincide at one half pound of powder and three pounds of shot.² The disposition of the tonnage revenues has already been noted as the same in several of the colonies; and a few other common features are to be observed in the different systems. There is a tendency, interrupted but unmistakable, toward higher rates and toward greater explicitness in the wording of the acts.³

Among the many principles of discrimination, the most common was that which made ships owned within the local

¹ Hening's "St. of Va.," ii., 466; "Rec. of Mass.," v., 242; "Rec. of R. I.," iii., 277; Cooper's "St. of S. C.," ii., 42; Bacon's "Laws of Md.," c. 17 of June, 1692.

² Hening's "St. of Va.," ii., 134, etc.; Bacon's "Laws of Md.," c. 7 of May, 1661; c. 2 of June, 1676, etc.

³ Taking Virginia as an example, we find these changes: in 1633, $\frac{1}{4}$ lb. powder, and shot proportionately; 1645, $\frac{1}{2}$ lb. powder; 1646, $\frac{1}{2}$ lb. powder and 3 lb. shot; 1680, $\frac{1}{2}$ lb. powder and 3 lb. shot, or 1*s*. 3*d*.; 1780, 1*s*. 3*d*.; 1785, 5*s*.; 1786, 2*s*. to 6*s*.

The earliest tonnage of Virginia was to be collected on "every ship coming out of the ocean"; another, ten years later, was at the rate of " $\frac{1}{4}$ lb. of powder, shot, match, and paper royal proportionately for every ton of shipping coming to Virginia." On the other hand, the act of 1786 specified with the greatest fullness of detail the vessels on which tonnage of from 2*s*. to 6*s*. should be paid. In fact many of the latest state acts are more carefully phrased than the Federal acts which immediately followed them.

jurisdictions free as against those owned without.¹ But here the exemption of English vessels seems, in some cases at least, to have been implied.² At times, too, exemptions were extended wholly³ or in part to portions of America and to friendly powers,⁴ only partially granted to England,⁵ or variously graded according to the place of construction and ownership of the vessel.⁶ In the state period there were several instances where the line of division was drawn between nations within and without the alliance of the United States. The influence of this distinction, which was aimed especially against England, was felt by the Federal Congress in 1789.

Lastly come import duties proper. And here let it again be recalled that there were also other impositions which, in the end, directly or indirectly, fell on the same commodities.

At first glance, indeed, the connection between the British and American systems is not seen. Whereas in England nearly every article of exportation or importation had long been enumerated in the tariff lists, the early American tariffs left most articles free.⁷ Even when in America, too, all articles came under a duty, few were enumerated, and the most were subject only to a general ad valorem assessment.⁸ Again, the first colonial customs seem on the whole

¹ "Laws of N. H.," 64; Henning's "St. of Va.," i., 402, 480; ii., 272; "Records of Mass.," iv., part 2, 331; "Rec. of R. I.," iii., 487; Cooper's "St. of S. C.," ii., 150; iii., 588; iv., 621; Bacon's "Laws of Md.," c. 7 of May, 1661.

² Henning's "St. of Va.," ii., 218.

³ "Rec. of Mass.," ii., 132; v., 242; "Rec. of R. I.," iii., 504; Henning's "St. of Va.," ii., 218.

⁴ Henning's "St. of Va.," xii., 289.

⁵ "Rec. of Mass.," ii., 132.

⁶ *E.g.*, Cooper's "St. of S. C.," ii., 150; iii., 588. The same discrimination held in New York, Rhode Island, and other colonies.

⁷ Henning's "St. of Va.," ii., 128; iii., 23, 88, 193; "Rec. of Mass.," i., 96; ii., 106, 130, 246; "Rec. of R. I.," iv., 34, 450, 454; "Laws of Conn.," 207, 238; Cooper's "St. of S. C.," ii., 96; 164, 177; "Laws of Del.," i., 166; "Acts of Gen. Assy. of N. J., I," 291; "Colonial Records of Pennsylvania," i., 98; "Records of the Colony and Plantations of New Haven," ii., 145, 452, 591. But see "Laws and Ordinances of New Netherland, 1638-1674," 31.

⁸ "Rec. of Mass.," iv., part 2, 410; Henning's "St. of Va.," x., 379, 501.

to be levied for the revenue which they would produce,¹ although it was largely the introduction of this principle of tariff for revenue into the British colonial policy, that aroused America against Great Britain. But these difficulties lie upon the surface. In general, the change from ad valorem to specific duties was regarded as at once a preventive of fraud and a means of increasing the tax.² The crude state of the art of customs taxation and the small need for provincial revenues, as distinguished from those of the central government, would, therefore, account both for the brevity of the earliest lists and for the prevalence of ad valorem duties. The fact that the colonial acts regularly stated or at least implied a primary regard for revenue is not inexplicable to one who recalls that in most cases these acts were subject to the approval of the home government, and were, therefore, little likely to stand, if they openly professed to be directed against British interests. When it is still further recalled that the tariffs were expected to supply but a part of the indirect taxes, and that indirect taxation was in turn the less important method of raising revenues, but a very modest beginning should be expected for import duties. And in most of the colonies the beginning was indeed small.³

In 1661, after export and tonnage duties had been in force for years in Virginia, the legislature thought it necessary, in placing the first import duty on rum and sugar, to justify its course by a reference to the evil effects of drink.⁴ The only articles taxed by this act were liquors and sugar; and these, with the later specification of different kinds of liquors, made up the dutiables until 1699. In this year funds were needed for the erection of a capitol; and duties of 15s.

¹ Hening's "St. of Va.," iii., 193; "Rec. of Mass.," ii., 132; iv., part 2, 410, Etc.

² "Madison Papers," i., 340; "Annals of First Congress," debates on the tariff of 1789.

³ But there was a duty of ten per cent. on all goods imported into New Netherland in 1642. "Laws and Ordinances of N. N.," 31. See also "Documents relating to the Colonial History of the State of New York," i., 113.

⁴ Hening's "St. of Va.," ii., 128.

and 20s. respectively, were put on servants and slaves.¹ No further additions were made to the lists until the formation of the state government;² but upon liquor and slaves the duty was maintained with considerable uniformity. Aside from minor exceptions and conditions, the rate was kept pretty regularly at 3*d.* or 4*d.* per gallon on wines and spirits, and 1*d.* on beer, ale, and cider; upon slaves 5 per cent. of the selling price, or, later, 10 per cent. At the Declaration of Independence, the fall of the royal government, and the consequent lapse of its laws, left Virginia without a tariff; but, soon after, a general duty of 2½ per cent. ad valorem, was put on all imports.³ To this, specific duties were added in large numbers, and the ad valorem rate was itself often changed. This development, which was now more rapid than in the colonial period, followed the same course, and took in various kinds of spirituous and malt liquors and wines; but it went further than before and added new articles. The effect of Virginia's earlier state tariffs on the impost of 1783 is uncertain; but it can scarcely be doubted that the Federal act of 1789 owes many of its items to the latest Virginia tariffs.

In Massachusetts, a typical northern colony, there is to be seen the same general course of legislation. After a crude and temporary imposition on beaver skins, the first experiment here was a duty of one twenty-fourth part of "the value current among merchants," which was in 1645 levied upon imported wines. Here, too, wines, brandy, and "rumme," continued to be taxed; and here, too, when the first general tariff act was passed, salt and gunpowder, money, plate, and bullion were excepted.⁴

Inasmuch as Rhode Island so resolutely opposed the imposts of 1781 and 1783, and refused to come into the Union until after the act of 1789 was passed, her colonial legislation has not so direct a bearing upon the general

¹ Hening's "St. of Va.," iii., 193.

² Except in unimportant cases, as in Hening's "St. of Va.," vi., 124.

³ Except salt, blankets, iron and steel, arms and ammunition. Hening's "St. of Va.," x., 165.

⁴ "Rec. of Mass.," i., 96, 140; ii., 106, 246; iv., part 2, 410; v., 138.

scheme of American customs. Still her almost isolated position gives her course a certain interest. During the period before the Revolution not much was here done in the way of taxing imports. Afterward, when the critical point of the war was passed, this state, in the height of her local jealousy, made frequent and vigorous use of her power to tax imports. In June, 1783, having recently refused Congress the impost of 1781, she levied on all goods of foreign manufacture a duty of 2 per cent., and a year later increased it to 2½ per cent.¹ Afterward, when she had so conditioned her grant of the impost of 1783 that "it cannot be considered a compliance with any part of the plan,"² she encouraged her state manufactures by still higher duties, and finally met the tariff of 1789 by corresponding duties on goods imported from the United States.

The customs laws of South Carolina were from the first more complex than even those of Virginia. The legislative records are incomplete, but it appears that in 1695 was passed an amendment to a previous act taxing liquors, tobacco, and provisions.³ Other similar acts followed and in 1703 was enacted a general tariff, whereby, after liquors of several kinds, provisions, and slaves had been specifically taxed, all else was brought under an ad valorem rate of 3 per cent. This act, modified or supplemented in times of special need and gradually including more specific duties, formed the permanent basis of the South Carolina system, and, after being repeatedly continued by the royal government of the province, was revived by the state in 1783.⁴ Here too, as in Virginia, these years are filled with trade regulations which furnished data for later law-makers. The direct, positive bearing of these South Carolina acts upon the first Continental tariffs is not, however, of great importance. The state act of 1783 was not yet passed when the impost of that year was made up by Congress; and when the national tariff of 1789 was prepared, no special regard was had for the previous experience of South Carolina.

The other colonies present each its own peculiarities.

¹ "Rec. of R. I.," ix., 719; x., 48. ² "Journals of Amer. Cong.," iv., 618.

³ Cooper's "St. of S. C.," ii., 96. ⁴ Cooper's "St. of S. C.," iv., 565.

Contrasts both of detail and of general policy abound, and among them, too, certain fundamental similarities. Those colonies which, by reason of their geographical situation, received a large part of their foreign wares through their neighbors, did not find it practicable to collect any considerable duties along their inland frontiers. North Carolina, therefore, and New Jersey furnish few and comparatively unimportant data; Maryland, although among the most active in taxing exports, was, until after the Revolution, as near the other extreme in import duties; while I have found not a single import duty in the Delaware laws.¹ In this connection two acts, one of Maryland and one of New Jersey, are noteworthy. For the two years 1778 and 1779 all duties, except those on imported slaves, were suspended in Maryland. New Jersey, in granting Congress the impost of 1783, ordained that until that duty should go into effect, her ports should be "free of all duties, customs, or impositions of any species or denomination."² Connecticut, too, had no import duties at this time.³

But, notwithstanding these local and other peculiarities, there are features, which, roughly speaking, are found in all the colonies. Liquors were the first objects of the duty,⁴ and they remained the centre about which were grouped the later additions. Slaves, too, although brought into the lists at different times, were ultimately taxed at North and South alike.⁵ Later on, liquors were regularly divided into

¹ There was, from 1730 on, a charge of £5 per capita on criminals imported, and a fee of 6d. on immigrants.—"Laws of Del.," i., 166.

² Hanson's "Laws of Md.," c. 18 of Feb., 1777. New Jersey still maintained her old charge of £5 per capita on convicts imported as servants, and £15 on imported slaves. "Acts of Council and Gen. Assy. of N. J.," 329.

³ "Works of Hamilton," ii., 370.

⁴ Henning's "St. of Va.," ii., 128. "Rec. of Mass.," ii., 106. "Records of the Colony of New Plymouth in New England," xi., 131; "Rec. of R. I.," iv., 450; "Rec. of New Haven," ii., 145, 452, etc. "Rec. of Conn.," i., 255, etc. Cooper's "St. of S. C.," ii., 96. "Laws of N. C.," 45. "Acts of Gen. Assy. of N. J. I.," 271. Bacon's "Laws of Md.," c. 22 of June, 1692. "Rec. of Penn.," i., 199.

⁵ "Rec. of R. I.," iv., 34; Cooper's "St. of S. C.," ii., 200; "Rec. of Penn.," iii., 250, 359; viii., 601; Henning's "St. of Va.," iii., 193; iv., 469; "Acts of Gen. Assy. of N. J. II.," 300, 315; Bacon's "Laws of Md.," c. 28 of Nov., 1763; c. 9 of July, 1754; Iredell's "Laws of N. C.," 577.

wines, spirituous and malt liquors, and each of these in turn subdivided; tea, sugar, and coffee became common dutiables, and salt was regularly made duty free; at some time, also, a general ad valorem rate was introduced to cover articles before untaxed. Beyond these, and possibly a few other generalizations, it is hardly safe to go. Each colony filled in the details of its tariff-lists as its own interests were thought to require. Thus Rhode Island, with the aim of becoming a manufacturing state, specified many manufactured products, hats, boots, shoes, clothing, adzes, axes, and other tools, paper, soaps, canes, toys, clocks, jewelry, etc.—articles which “might be manufactured to advantage within this state.”¹ Virginia, having public salt works, even taxed salt after the Revolution.² South Carolina included more of agricultural and grazing products, as bread, flour, ginger, cheese, hams, provisions, candles, etc.³ But not only were there such differences between the colonies, but there were others scarcely less in the same colony from year to year.

Although the articles were so variously enumerated and classified, there was still enough similarity, especially after the impost resolutions of 1781 and 1783, to give a rude standard for showing the frequent inequality of rates. A few cases will serve as examples. In 1698, Maryland, in order to secure funds for the erection of a capitol, was collecting a duty of 2s. 6d. on white servants, and 10s. on slaves. Virginia, for the same purpose, taxed them 15s. and 20s. respectively. And while the rate seems to have remained the same in Virginia, in Maryland it was increased to 20s. on both servants and slaves in 1704, and to 40s. in 1717.⁴ In 1784, both Maryland and South Carolina passed long and important tariff acts, which show in a fair proportion the harmony and the conflicts of the period.⁵ Mary-

¹ “Rec. of R. I.,” x., 89, 115. ² Henning’s “St. of Va.,” ix., 310; xi., 196.

³ Cooper’s “St. of S. C.,” ii., 300, 649; iii., 159.

⁴ Bacon’s “Laws of Md.,” c. 9 of May, 1695; Henning’s “St. of Va.,” iii., 193, 212, 229.

⁵ Hanson’s “Laws of Md.,” c. 84 of Nov., 1784; Cooper’s “St. of S. C.,” iv., 607.

land taxed all spirits at 2*d.* per gallon; South Carolina had three classes, at 1*d.*, 2*d.*, and 3*d.* Each classified wines in its own way, and Maryland taxed them at 3*d.*, 4*d.*, and 6*d.* per gallon; South Carolina at 2*d.*, 3*d.*, and 4*d.* Coffee was put at 5*s.* per cwt. in Maryland and at 3*s.* in South Carolina; bohea tea, at 2*d.* and 4*d.* per pound respectively. No other common ground exists except the unenumerated articles, which were rated at 2 per cent. in Maryland, and 2½ per cent. in South Carolina. South Carolina passed a new act in 1787, and in the same year Virginia enacted one of the most comprehensive and detailed tariffs of the time.¹ Here again are only accidental similarities. Among the few enumerated articles common to the two lists are the following: Rum and spirits of various kinds, 1*d.*, 3*d.*, and 4*d.* per gallon in South Carolina; 1*s.*, in Virginia. Malt liquors, 1½*d.* per gallon in South Carolina; beer, ale, and porter, 9*d.* in Virginia. British refined sugar, 1½*d.* per pound, and other refined sugar, ½*d.* per pound in South Carolina; all loaf sugar, 3*d.* in Virginia. Bohea tea, 4*d.* in South Carolina; 1*s.* in Virginia. Coaches, chariots, and post-chaises were taxed 10 per cent. in South Carolina, £20 in Virginia; clocks, 10 per cent. in South Carolina, £5 in Virginia. These tedious comparisons might be carried to any length, but would only fortify the conclusion that although the impost resolution of 1783 did, perhaps, set going a tendency toward an agreement in the enumeration of articles, the rates were still determined by considerations purely local, and were, in consequence, as inharmonious as ever.

But it must not be thought here, any more than in the field of tonnage duties, that equivalent rates are nowhere to be found. Virginia's export duty on tobacco was for several years after 1669 2*s.* per hogshead, and in 1671 the adjoining colony of Maryland fixed upon the same amount.² Again, for about fifteen years after 1690 the import duty on spirits was 4*d.* per gallon in both these colonies³; at

¹ Cooper's "St. of S. C.," v., 8; Henning's "St. of Va." xii., 412.

² Henning's "St. of Va.," ii., 272. Bacon's "Laws of Md.," c. 11 of April, 1671.

³ Henning's "St. of Va.," iii., 88. Bacon's "Laws of Md.," c. 20 of June, 1692.

about 1680 the tonnage of Massachusetts and of Rhode Island coincided at 12*d.*; within a very short time of each other, New Jersey and Delaware put a charge of £5 per capita on imported convicts. Any number of such petty instances which might be sought out would in themselves be of little significance. They might reasonably be attributed to chance, were it not that intentional concert in some minor matters is clearly made out.

How much, or rather how little of intercolonial courtesy pervades the acts is most forcibly shown by an examination of the discriminations in the duties. Aside from the exemptions or abatements which each colony extended to British merchants¹ and to its own citizens, there are instances of similar favors to Americans in general and to foreigners. In 1665 Virginia, finding that her high duties were driving New England vessels to Maryland, opened her ports to American bottoms on the same terms of freedom previously enjoyed by Englishmen and Virginians.² Two years later Virginia returned to Maryland the same total exemption from export duty on tobacco which she, in common with England and Ireland, had from the first received at the hands of her northern neighbor.³ In the next century special concessions, intended to increase the trade in liquors and tobacco with the West Indies, were granted to the traders of those inland.⁴ The dependent situation of New Jersey induced her to make frequent petty exceptions in favor of her commercial neighbors New York and Pennsylvania.⁵ Instances of unfriendly discriminations are also found. During the early part of the eighteenth century, while the boundary dispute of Pennsylvania and Maryland was hot, Maryland undertook by embargoes and threefold duties to cut off her inland trade to the north-

¹ Henning's "St. of Va.," i., 469, 536; iii., 229; etc. "Laws of N. C.," 155. Bacon's "Laws of Md.," c. 2 of March, 1638, Etc.

² Henning's "St. of Va.," ii., 218. But this concession appears to have been but temporary.

³ Henning's "St. of Va.," ii., 259.

⁴ Henning's "St. of Va.," iii., 229; vi., 471; ix., 547.

⁵ "Acts of Gen. Assy. of N. J. I.," 215, 445; II., 378, 381, 450.

ward.¹ From these and other provisions, for the most part equally narrow and selfish, it is seen that until the Revolution any thing like a continental spirit was unknown to the American systems.

When, however, the colonies became independent states, and the Federal sentiment began to grow, there were more of discriminations in favor of the United States and her allies.² One particular form of discrimination whereby the rate of import or export duties was made to depend upon the nationality of the carrying bottom, came to be customary in some of the leading states, even at the same time with discriminations in tonnage³; and this same device was adopted by the Federal Congress in 1789 to coerce unfriendly powers.

The rates of the colonial tariffs, in comparison with those of the present, or even with those of 1789, were almost nominal. The usual rate of import duties in Virginia was: on slaves, 5 per cent. or 10 per cent.; on malt liquors, 1*d.* per gallon; on other liquors, 3*d.* to 4*d.*; tonnage, 15*d.* Other colonies had still lower rates. In 1645 Massachusetts laid 10*s.* per butt, or about 1*d.* per gallon on sack, and 2½*s.* per hogshead, or about half as much, on French wines⁴; and a few years later nearly the same amounts on other liquors. Even after these rates were doubled,⁵ they were still low. It was, however, the general ad valorem rate that covered the great mass of imports, and this was also very low. It stood in Virginia at different times at 2½ per cent., 1 per cent., and 2½ per cent.; in Massachusetts at 2 per cent.; in Rhode Island, 2½ per cent.; in South Carolina, 3 per cent., 5 per cent., 1 per cent., 2½ per cent., and 3 per

¹ Bacon's "Laws of Md.," cc. 30 and 43 of October, 1704; c. 18 of June, 1715.

² Hening's "St. of Va.," xii., 289, 290, 304, 514. "Rec. of R. I.," x., 106. Cooper's "St. of S. C.," iv., 576, 607; v., 8. Acts of the General Assembly of the Commonwealth of Pennsylvania carefully compared with the originals, 422.

³ Hening's "St. of Va.," xii., 290, 304. "Rec. of R. I.," x., 106. Hanson's "Laws of Md.," c. 29 of November, 1783; c. 84 of November, 1784. Also Cooper's "St. of S. C.," iii., 56, and "Rec. of Penn.," ii., 234.

⁴ "Rec. of Mass.," ii., 130, 247.

⁵ "Rec. of Mass.," v., 138.

cent.; in Connecticut, 5 per cent.; in Maryland, 2 per cent.; in Pennsylvania, 1 per cent. To these easy rates there were, it is true, exceptions, notably as to slaves and horses, and, in times of financial need, other imports.¹ Moreover, in the state period there was a general increase; but the state duties were still so low² that when the change to what we now consider the very moderate tariff of 1789 was under discussion, fears were constantly expressed in Congress that so great and sudden a rise might tempt the Americans to smuggle.

How small was the product of such duties can in some cases be learned from the colonial records. In 1641 the "customs" receipts of England were £500,000.³ Seven years later the duties of Massachusetts were farmed for £120 per year; in 1652 they were relet for a term of years at £165 per year, but the farmer soon asked to be relieved from his bargain. After the general tariff of 1668 went into effect, there was so great an increase in the revenue that in 1672 it was not necessary to collect any direct tax.⁴ In South Carolina the legislature in 1721 estimated the customs at £7,995, and by 1754 they had grown to £9,645, or one seventh part of the expenses of government.⁵ The Governor of Virginia was in 1660 allowed 60,000 pounds of tobacco in place of the castle duties for the year.⁶ Just before the ratification of the Federal Constitution the customs revenues of the three states of Massachusetts, New York, and Pennsylvania were estimated at £160,000 to £180,000 per year.⁷

Another respect wherein the past differed from the present is in the short duration of the colonial acts. Following

¹ Hening's "St. of Va.," vi., 124. Cooper's "St. of S. C.," ii., 164; iv., 327. The specific duties, it will be remembered, are not to be measured against the higher prices of the present.

² According to No. XII. of the *Federalist*, in no State more than 3 per cent.

³ Macpherson's "Annals of Commerce, Manufactures, Fisheries and Navigation," ii., 415.

⁴ "Rec. of Mass.," iii., 142, 401; iv., part 2, 534.

⁵ Cooper's "St. of S. C.," iii., 149; iv., 10.

⁶ Hening's "St. of Va.," ii., 9. Equals about £300; Hening's "St. of Va.," ii., 222.

⁷ Elliot's "Debates," ii., 193.

a precedent set by the Parliament in many customs acts, the colonial tariffs were not enacted to stand for a long term of years or until repealed, but for one, two, three, or at most four years, and, in the formula of the times, "thereafter until the end of the next session of the Assembly." There were, however, occasionally, permanent acts, and on the other hand many for even briefer terms.

Regularly in the temporary acts, and very often also in those of longer duration, there were specified objects to which the resulting revenues should be applied. This practice, for which there was abundant precedent in English usage, was scarcely less prevalent in connection with other duties than with tonnage.¹ As late as 1783 Representative Lee of Virginia, declared in Congress that distinct and specific appropriations of distinct revenue was the only true system of finance.² Congress had, therefore, a double reason,—the previous practice and the jealousy of the states,—for pledging the expected products of the imposts of 1781 and 1783 to the payment of the war debt.

Many phases of this early legislative history would repay a more careful examination. It is interesting to note the increasing complexity of the laws. Laws of any kind made for communities as small as the early settlements would at first be short and expressed in simple terms. But as the settlements spread, and the colonies began to touch each other, tariff laws, like all others, became more elaborate, changed ad valorem to specific duties, and in a score of ways took on new features. Slavery, it would be found, although recognized by taxation, was from the first burdened both with direct taxes and with the heaviest duties of the time. As the sentiments of the people grew more refined, and were not yet repressed by an increased profit in slavery, restrictions on the slave-trade were multiplied, until in 1788 only the three states of Georgia, South

¹ Hening's "St. of Va.," iii., 173; v., 310; vi., 417. Cooper's "St. of S. C.," iii., 23; iv., 257. "Laws of N. C.," 342. Bacon's "Laws of Md.," c. 9 of May, 1695; c. 19 of August, 1729; c. 31 of August, 1732. "Rec. of Penn.," viii., 101.

² "Madison Papers," i., 345.

Carolina, and North Carolina permitted the importation of negroes. And of these North Carolina had substantially forbidden the trade; while South Carolina had years before levied a duty of £100 per head, "in order totally to prevent the importation of slaves." Salt, liquor, tobacco, skins, and furs, each undergo an interesting course of treatment at the hands of the early legislators. Protectionism, too, is seen to have arisen, not after the war of 1812, as some have asserted, nor yet as late as 1789. On the contrary, this doctrine may be traced back before the Revolution, and in the period between the close of the war and the organization of the Federal Government it was more than once as explicitly avowed as language permitted.¹

It is impossible briefly to summarize the whole matter of colonial and state trade legislation, unless it be by the one word "confusion." Such a system of temporary and specifically appropriated duties carried on in each of a dozen centres of local authority naturally resulted in an enormous amount of legislation. The thirteen colonies give in the aggregate over a thousand years of law-making, and years made especially active in trade regulation by the example of the mother country, by real or fancied conflicts of interest, and by the current belief that foreign trade, if properly directed, was the great source of national prosperity. Each new object of expenditure called for new action, in which the legislator looked only to his own colony and the present need. Not only, therefore, were the regulations very numerous, but they were without unity and harmony. There are, it is true, instances of equality in rates; necessarily, too, certain common tendencies toward higher rates and toward greater explicitness in the provisions; even some few feeble attempts at agree-

¹ "Life and Works of John Adams, second President of the United States," (10 vols., Boston, 1856), viii., 340, 355; "Madison Papers," iii., 1445; Elliot's "Debates," ii., 57-59, 139; "Writings of Jas. Madison," iii., 43, 160; *Continentalist*, No. iv.; "Rec. of R. I.," x., 48, 89, 115; "Laws of the Commonwealth of Pennsylvania," from Oct. 14, 1700, to March 20, 1810 (4 vols., Philadelphia, 1810), vol. ii.; "Annals of 1st Congress," i., debates on the tariff of 1789; see also *Quar. Jour. of Ec.*, ii., 473 ff.

ment; but all this meant little. The first real advance toward a continental tariff was not made until Congress so persistently pressed the impost resolutions of 1781 and 1783 upon the attention of the states. Even then progress was extremely slow.¹ Compromise and union in this matter, as in so many others, was a later outcome of the desperate condition in which the states found themselves in 1787.

¹ See John Fiske's "A Critical Period of American History," pp. 142 ff. and 218-220.



MUSEUM-HISTORY AND MUSEUMS OF
HISTORY



MUSEUM-HISTORY AND MUSEUMS OF HISTORY.

By G. BROWN GOODE, LL.D., Assistant Secretary of the Smithsonian Institution in charge of the National Museum.

The true significance of the word MUSEUM may perhaps best be brought to our apprehension by an allusion to the ages which preceded its origin—when our ancestors, hundreds of generations removed, were in the midst of those great migrations which peopled Europe with races originally seated farther to the east.

It has been well said that the story of early Greece is the first chapter in the history of the political and intellectual life of Europe.

To the history of Greece let us go for the origin of the museum-idea, which in its present form seems to have found its only congenial home among the European off-shoots of the Indo-Germanic division of the world's inhabitants.

Museums, in the language of ancient Greece, were the homes of the muses. The first were in the groves of Parnassus and Helicon, and later they were temples in various parts of Hellas. Soon, however, the meaning of the word changed, and it was used to describe a place of study, or a school. Athenæus described Athens in the second century as "the museum of Greece," and the name of museum was definitely applied to that portion of the palace of Alexandria which was set apart for the study of the sciences, and which contained the famous Alexandrian library. The museum of Alexandria was a great university, the abiding-place of men of science and letters, who were divided into many companies or colleges, and for whose support a handsome revenue was allotted.

The Alexandrian museum was destroyed in the days of Cæsar and Aurelian, and the term museum, as applied to a great public institution, dropped out of use from the fourth to the seventeenth century. The disappearance of a word is an indication that the idea for which it stood has also fallen into disfavor; and such, indeed, was the fact. The history of museum and library run in parallel lines. It is not until the development of the arts and sciences has taken place, until an extensive written literature has grown up, and a distinct literary and scientific class has been developed, that it is possible for the modern library and museum to come into existence. The museum of the present is more dissimilar to its old-time representative than is our library to its prototype.

There were in the remote past galleries of pictures and sculpture, as well as so-called museums. Public collections of paintings and statuary were founded in Greece and Rome at a very early day. There was a gallery of paintings (Pinacotheca) in one of the marble halls of the Propylæum at Athens, and in Rome there were lavish public displays of works of art. M. Dezobry, in his "Rome in the time of Augustus," has described this phase of Latin civilization in the first century before Christ:

"For many years," remarks one of his characters, "the taste for paintings has been extending in a most extraordinary manner. In former times they were only to be found in the temples, where they were placed less for purposes of ornament than as an act of homage to the gods; now they are everywhere, not only in temples, in private houses, and in public halls, but also on outside walls, exposed freely to air and sunlight. Rome is one great picture-gallery; the Forum of Augustus is gorgeous with paintings, and they may be seen also in the Forum of Cæsar, in the Roman Forum, under the peristyles of many of the temples, and especially in the porticos used for public promenades, some of which are literally filled with them. Thus everybody is enabled to enjoy them, and to enjoy them at all hours of the day."

The public men of Rome, at a later period in its history, were no less mindful of the claims of art. They believed that the metropolis of a great nation should be adorned with all the best products of civilization. We are told by Pliny that when Cæsar was dictator he purchased, for 300,000 deniers, two Greek paintings, which he caused to be

publicly displayed, and that Agrippa placed many costly works of art in a hall which he built and bequeathed to the Roman people. Constantine gathered together in Constantinople the paintings and sculptures of the great masters, so that the city, before its destruction, became a great museum, like Rome.

The taste for works of art was generally prevalent throughout the whole Mediterranean region in the days of the ancient civilizations, and there is abundant reason to believe that there were prototypes of the modern museum in Persia, Assyria, Babylonia, and Egypt, as well as in Rome. Collections in natural history also undoubtedly existed, though we have no positive descriptions of them. Natural curiosities, of course, found their way into the private collections of monarchs, and were doubtless also in use for study among the savants in the Alexandrian museum. Aristotle, in the fourth century before Christ, had, it is said, an enormous grant of money for use in his scientific researches, and Alexander the Great, his patron, "took care to send to him a great variety of zoölogical specimens, collected in the countries which he had subdued," and also "placed at his disposal several thousand persons, who were occupied in hunting, fishing, and making the observations which were necessary for completing his 'History of Animals.'" If human nature has not changed more than we suppose, Aristotle must have had a great museum of natural history.

When the Roman capital was removed to Byzantium the arts and letters of Europe began to decline. The Church was unpropitious, and the invasions of the northern barbarians destroyed every thing. In 476, with the close of the Western Empire, began a period of intellectual torpidity which was to last for a thousand years.

It was in Bagdad and Cordova that science and letters were next to be revived, and Africa was to surpass Europe in the extent of its libraries. In the *Periplus*, or "Voyage of Hanno," occurs the following passage in regard to specimens of Gorillas, or "Gorgones":

"Pursuing them, we were not able to take the men (males); they all escaped, being able to climb the precipices, and defended themselves with pieces of rock. But three women (females), who bit and scratched those who led them, were not willing to follow. However, having killed them, we flayed them, and conveyed the skins to Carthage; for we did not sail any further, as provisions began to fail."¹

With the Renaissance came a period of new life for collectors. The churches of southern Europe became art galleries, and monarchs and noblemen and ecclesiastical dignitaries collected books, manuscripts, sculptures, pottery, and gems, forming the beginning of collections which have since grown into public museums. Some of these collections doubtless had their first beginnings in the midst of the dark ages, within the walls of feudal castles, or the larger monasteries, but their number was small, and they must have consisted chiefly of those objects so nearly akin to literature as especially to command the attention of bookish men.

As soon as it became the fashion for the powerful and the wealthy to possess collections, the scope of their collections began to extend, and objects were gathered on account of their rarity or grotesqueness, as well as for their beauty or instructiveness. Flourens, in his "Life and Works of Blumenbach," remarks: "The old Germany, with its old chateaux, seemed to pay no homage to science; still the lords of these ancient and noble mansions had long since made it a business, and almost a point of honor, to form with care what were called Cabinets of Curiosities."

To the apothecary of old, with his shop crowded with the curious substances used in the medical practice of his day, the museum owes some of its elements, just as the modern botanic garden owes its earliest history to the "Physic Garden," which in its time was an outgrowth of the apothecary's garden of simples. The Apothecary in "Romeo and Juliet"—

"In whose needy shop a tortoise hung,
An alligator stuff'd, and other skins
Of eel-shaped fishes,"—

was the precursor of the modern museum-keeper. In the hostleries and taverns, the gathering-places of the people

¹ OWEN, Trans. Zool. Soc., London, v., p. 266, foot-note.

in the sixteenth and seventeenth centuries, there grew up little museums of curiosities from foreign lands, while in the great fairs were always exhibited sundry gatherings of strange and entertaining objects.

At the middle of the last century there appear to have been several such collections of curiosities in Britain.

In Artedi's ichthyological works there are numerous references to places where he had seen American fishes, especially at Spring Garden (later known as the Vauxhall Garden, a famous place of resort), and at the "Nag's Head," and the "White Bear," and the Green Dragon in Stepney, in those days a famous hostelry in London. He speaks also of collections at the houses of Mr. Lillia and in that of Master Saltero (the barber-virtuoso, described by Bulwer in his "Devereux"), in Chelsea and at Stratford, and also in the collection of Seba, in Amsterdam, and in that of Hans Sloane.

With the exception of "*the monk or Angel-fish, Anglis, aliis Mermaid-fish,*" probably a species of *Squatina*, which he saw at the Nag's Head, all the fishes in these London collections belonged to the order Plectognathi.

Josselyn, in his "Two Voyages to New England" (1638-73), after telling us how a Piscataway colonist had the fortune to kill a Pilhannaw—the king of the birds of prey—continues, "How he disposed of her I know not, but had he taken her alive and sent her over into England, neither Bartholomew or Sturbridge Fair could have produced such another sight."

Shakespeare's mirror strongly reflects the spirit of the day. When Trinculo, cast ashore upon a lonesome island, catches a glimpse of Caliban, he exclaims:

"What have we here? A man or a fish? Dead or alive? A fish: he smells like a fish; a very ancient and fish-like smell. . . . A strange fish! Were I in England now, as once I was, and had but this fish painted, not a holiday fool there but would give a piece of silver; there would this monster make a man; any strange beast there makes a man; when they will not give a doit to relieve a lame beggar, they will lay out ten to see a dead Indian."

The idea of a great national museum of science and art was first worked out by Lord Bacon in his "New Atlantis," a philosophical romance published at the close of the

seventeenth century. The first scientific museum actually founded was that begun at Oxford in 1667, by Elias Ashmole, still known as the Ashmolean Museum, composed chiefly of natural-history specimens, collected by the botanists Tradescant, father and son, in Virginia, and in the north of Africa. Soon after, in 1753, the British Museum was established by act of Parliament, inspired by the will of Sir Hans Sloane, who, dying in 1749, left to the nation his invaluable collection of books, manuscripts, and curiosities.¹

Many of the great national museums of Europe had their origin in the private collections of monarchs. France claims the honor of having been the first to change a royal into a national museum, when, in 1789, the Louvre came into the possession of a republican government. It is very clear, however, that democratic England, by its action in 1753, stands several decades in advance,—its act, moreover, being one of deliberate founding rather than a species of conquest.

The first chapter in the history of American museums is short. In colonial days there were none. In the early years of the Republic, the establishment of such institu-

¹ The collections of Sloane, who was one of the early scientific explorers of America, were like those of the Tradescant's, contained many New-World specimens, and the British Museum as well as the Ashmolean was built around a nucleus of American material. Indeed, we cannot doubt that interest in American exploration had largely to do with the development of natural history museums.

In those days all Europe was anxious to hear of the wonders of the new-found continent, and to see the strange objects which explorers might be able to bring back with them, and monarchs sought eagerly to secure novelties in the shape of animals and plants.

Columbus was charged by Queen Isabella to collect birds, and it is recorded that he took back to Spain the skins of several kinds of animals. Even to this day may be seen, in the old collegiate church in Siena, a votive offering, placed there nearly four centuries ago by the discoverer of America. It consists of the armor worn by him when he first stepped upon the soil of the New World, and the rostrum of a swordfish killed on the American coast.

The state papers of Great Britain contain many entries of interest in this connection. King James I. was an enthusiastic collector. December 15, 1609, Lord Southampton wrote to Lord Salisbury that he had told the King about Virginia squirrels brought into England, which were said to fly. The King

tions by city, State, or Federal government would not have been considered a legitimate act. When the general government came into the possession of extensive collections as the result of the Wilkes Exploring Expedition in 1842, they were placed in charge of a private organization, the National Institution, and later, together with other similar materials, in that of a corporation, the Smithsonian Institution, which was for a long period of years obliged to pay largely for their care out of its income from a private endowment. It was not until 1876, however, that the existence of a *National Museum*, as such, was definitely recognized in the proceedings of Congress, and its financial support fully provided for.

In early days, however, our principal cities had each a public museum, founded and supported by private enterprise. The earliest general collection was that formed at Norwalk, Connecticut, prior to the Revolution, by a man named Arnold, described as "a curious collection of American birds and insects." This it was which first awakened the interest of President Adams in the natural sciences. He visited it several times as he travelled from Boston to

very earnestly asked if none were provided for him—whether Salisbury had none for him—and said he was sure Salisbury would get him one. The writer apologises for troubling Lord Salisbury, "but" continued he, "you know so well how he (the king) is affected to such toys."

Charles I. appears to have been equally curious in such matters. In 1637 he sent John Tradescant, the younger, to Virginia "to gather all rarities of flowers, plants, and shells."

In 1625 we find Tradescant writing to one Nicholas that it is the Duke of Buckingham's pleasure that he should deal with all merchants from all places, but especially from Virginia, Bermuda, Newfoundland, Guinea, the Amazons, and the East Indies for all manner of rare beasts, fowls and birds, shells and shining stones, etc.

In the Domestic Correspondence of Charles I. in another place, July, 1625, is a "Note of things desired from Guinea, for which letters are to be written to the merchants of the Guinea Company." Among other items referred to are "an elephant's head, with the teeth very large; a river-horse's head; strange sorts of fowls; birds' and fishes' skins; great flying and sucking fishes; all sorts of serpents; dried fruits, shining stones, etc." Still further on is a note of one Jeremy Blackman's charge—in all, £20—for transporting four deer from Virginia, including corn and a place made of wood for them to lie in.

Philadelphia, and his interest culminated in the foundation of the American Academy of Arts and Sciences.¹ In 1790 Dr. Hosack brought to America from Europe the first cabinet of minerals ever seen on this continent.

The earliest public establishment, however, was the "Philadelphia Museum," established by Charles Wilson Peale in 1785, which had for a nucleus a stuffed paddle-fish and the bones of a mammoth, and which was for a time housed in the building of the American Philosophical Society. In 1800 it was full of popular attractions.

"There were a mammoth's tooth from the Ohio, and a woman's shoe from Canton; nests of the kind used to make soup of, and a Chinese fan six feet long; bits of asbestos, belts of wampum, stuffed birds and feathers from the Friendly Islands, scalps, tomahawks, and long lines of portraits of great men of the Revolutionary War. To visit the museum, to wander through the rooms, play upon the organ, examine the rude electrical machine, and have a profile drawn by the physiognomist, were pleasures from which no stranger to the city ever refrained."

Dr. Hare's oxyhydrogen blow-pipe was shown in this museum by Mr. Rubens Peale as early as 1810.

The Baltimore Museum was managed by Rembrandt Peale, and was in existence as early as 1815 and as late as 1830.

Earlier efforts were made, however, in Philadelphia. Dr. Chovet, of that city, had a collection of wax anatomical models made by him in Europe, and Prof. John Morgan, of the University of Pennsylvania, who learned his methods from the Hunters in London and Sué in Paris, was also forming such a collection before the Revolution.

The Columbian Museum and Turrell's Museum, in Boston, are spoken of in the annals of the day, and there was a small collection in the attic of the State House in Hartford.

¹ "This collection," we are told, "was sold to Sir Ashton Lever, in whose apartments in London Mr. Adams saw it again, and felt a new regret at our imperfect knowledge of the productions of the three kingdoms of nature in our land. In France his visits to the museums and other establishments, with the inquiries of Academicians and other men of science and letters respecting this country, and their encomiums on the Philosophical Society of Philadelphia, suggested to him the idea of engaging his native State to do something in the same good but neglected cause."—KIRTLAND, *Mem. American Academy of Sciences*, Boston, I., xxii.

The Western Museum, in Cincinnati, was founded about 1815, by Robert Best, M.D., afterwards of Lexington, Ky., who seems to have been a capable collector, and who contributed matter to Godman's "American Natural History." In 1818 a society styled the "Western Museum Society" was organized among the citizens, which, though scarcely a scientific organization, seems to have taken a somewhat liberal and public-spirited view of what a museum should be. With the establishment of the Academy of Natural Sciences in Philadelphia in 1812, and the New York Lyceum of Natural History, the history of American scientific museums had its true beginning.

The intellectual life of America is so closely allied to that of England, that the revival of interest in museums, and in popular education at the middle of the present century is especially significant to us. The great Exhibition of 1851 was one of the most striking features of the industrial revolution in England, that great transformation which, following closely upon the introduction of railroads, turned England feudal and agricultural, into England democratic and commercial.

The great Exhibition marked an epoch in the intellectual progress of English-speaking people. "The great Exhibition," writes a popular novelist, and a social philosopher as well, "did one great service for country people: it taught them how easy it is to get to London, and what a mine of wealth, especially for after-memory and purposes of conversation, exists in that great place."

Under the wise administration of the South Kensington staff a great system of educational museums has been developed all through the United Kingdom.

Our own Centennial Exhibition in 1876 was almost as great a revelation to the people of the United States. The thoughts of the country were opened to many things before undreamed of. One thing we may regret—that we have no such widespread system of museums as that which has developed in the motherland with South Kensington as its administrative centre. England has had nearly forty years

however, and we but thirteen, since our Exhibition. May we not hope that within a like period of time, and before the year 1914, the United States may have attained the position which England now occupies, at least in the respects of popular interest and substantial governmental support? There are now over one hundred and fifty public museums in the United Kingdom, all active and useful.

The museum systems of Great Britain are, it seems to me, much closer to the ideal which America should follow, than are those of either France or Germany. They are designed more thoughtfully to meet the needs of the people, and are more intimately intertwined with the policy of national popular education.

Sir Henry Cole, the working founder of the "Department of Science and Art," speaking of the purpose of the museums under his care, said to the people of Birmingham in 1874:

"If you wish your schools of Science and Art to be effective, your health, the air, and your food to be wholesome, your life to be long, your manufactures to improve, your trade to increase, and your people to be civilized, you must have Museums of Science and Art, to illustrate the principles of life, health, nature, science, art and beauty."

Again, in words as applicable to Americans of to-day as to Britons in 1874, said he:

"A thorough education, and a knowledge of science and art are vital to the nation, and to the place it holds at present in the civilized world. Science and art are the life-blood of successful production. All civilized nations are running a race with us, and our national decline will date from the period when we go to sleep over the work of education, science, and art. What has been done is at the mere threshold of the work yet to be done."

The people's museum should be much more than a house full of specimens in glass cases. It should be a house full of ideas, arranged with the strictest attention to system. I once tried to express this thought by saying: "*An efficient educational museum may be described as a collection of instructive labels, each illustrated by a well selected specimen.*"

The museum, let me add, should be more than a collection of specimens, well arranged and well labelled. Like

the library it should be under the constant supervision of one or more men, well informed, scholarly, and withal practical, and fitted by tastes and training to aid in the educational work. I should not organize the museums primarily for the use of people in their larval or school-going stage of existence. The public school-teacher, with the illustrated text-books, diagrams, and other appliances, has in these days a professional outfit which is usually quite sufficient to enable him to teach his pupils.

School-days last at the most only from four to fifteen years, and they end, with the majority of mankind, before their minds have reached the stage of growth most favorable for the reception and assimilation of the best and most useful thought. Why should we be crammed in the time of infancy and kept in a state of mental starvation during the period which follows, from maturity to old age—a state which is disheartening and unnatural all the more because of the intellectual tastes which have been stimulated and partially formed by school life?

The museum-idea is much broader than it was fifty or even twenty-five years ago. The museum of to-day is no longer a chance assemblage of curiosities, but rather a series of objects selected with reference to their value to investigators, or their possibilities for public enlightenment. The museum of the future may be made one of the chief agencies of the higher civilization.

I hope that the time will come when every town shall have both its public museum and its public library, each with a staff of competent men, mutually helpful, and contributing largely to the intellectual life of the community.

The museum of the future in this democratic land should be adapted to the needs of the mechanic, the factory operator, the day-laborer, the salesman, and the clerk, as much as to those of the professional man and the man of leisure. It is proper that there be laboratories and professional libraries for the development of the experts who are to organize, arrange, and explain the museums.

It is proper that laboratories be utilized to the full-

est extent for the credit of the institution to which they belong. No museum can do good and be respected which does not each year give additional proofs of its claims to be considered a centre of learning. On the other hand, the public have a right to ask that much shall be done directly in their interest. They will gladly allow the museum officer to use part of his time in study and experiment. They will take pride in the possession by the museum of tens of thousands of specimens, interesting only to the specialist, hidden away perpetually from public view, but necessary for proper scientific research. They are the foundations of the intellectual superstructure which gives to the institution its proper standing.

Still no pains must be spared in the presentation of the material in the exhibition halls. The specimens must be prepared in the most careful and artistic manner, and arranged attractively in well designed cases and behind the clearest of glass. Each object must bear a label giving its name and history so fully that all the probable questions of the visitor are answered in advance. Books of reference must be kept in convenient places. Colors of walls, cases, and labels must be restful and quiet, and comfortable seats must be everywhere accessible, for the task of the museum visitor is a weary one at best.

All intellectual work may be divided into two classes, the one tending toward the increase of knowledge, the other toward its diffusion; the one toward investigation and discovery, the other toward the education of the people and the application of known facts to promoting their material welfare. The efforts of learned men and of institutions of learning are sometimes applied solely to one of these departments of effort,—sometimes to both, and it is generally admitted, by the most advanced teachers, that, for their students as well as for themselves, the happiest results are reached by carrying on investigation and instruction simultaneously. Still more is this true of institutions of learning. The college which imparts only second-hand knowledge to its students belongs to a period in the history of education which is fast being left behind.

The museum must, in order to perform its proper functions, contribute to the advancement of learning, through the increase as well as through the diffusion of knowledge.

We speak of "educational" museums and of the "educational" method of installation so frequently that there may be danger of inconsistency in the use of the term. An educational museum, as it is usually spoken of, is one in which an attempt is made to teach the unprofessional visitor of an institution for popular education, by means of labelled collections, and it may be, also, by popular lectures. A college museum, although used as an aid to advanced instruction, is not an "educational museum" in the ordinary sense, nor does a museum of research, like the Museum of Comparative Zoölogy at Cambridge, Massachusetts, belong to this class, although, to a limited extent, it attempts and performs popular educational work in addition to its other functions.

In the National Museum in Washington the collections are divided into two great classes: the exhibition series, which constitutes the educational portion of the museum, and is exposed to public view, with all possible accessories for public entertainment and instruction; and the study series, which is kept in the scientific laboratories, and is rarely examined except by professional investigators.

In every properly conducted museum the collections must, from the very beginning, divide themselves into these two classes, and in planning for its administration, provision should be made, not only for the exhibition of objects in glass cases, but for the preservation of large collections not available for exhibition, to be used for the studies of a very limited number of specialists. Lord Bacon, who, as we have noticed, was the first to whom occurred the idea of a great museum of science and art, complains thus, centuries ago, in his book "On the Advancement of Learning," that up to that time the means for intellectual progress had been used exclusively for "amusement" and "teaching," and not for the "augmentation of science."

The boundary line between the library and the museum is neither straight nor plain. The former, if its scope be

rightly indicated by its name, is, primarily, a place for books. The latter is a depository for objects of every kind, books not excepted. The British Museum, with its libraries, its pictures, its archæological galleries, its anthropological, geological, botanical, and zoölogical collections, is an example of the most comprehensive interpretation of the term. Professor Huxley has described the museum as "a consultative library of objects." This definition is suggestive but unsatisfactory. It relates only to the contents of the museum as distinguished from those of the library, and makes no reference to the differences in the methods of their administration.

The treasures of the library must be examined one at a time, and by one person at a time. Their use requires long-continued attention, and their removal from their proper places in the system of arrangement. Those of the museums are displayed to public view in groups, in systematic sequence, so that they have a collective as well as an individual significance. Furthermore, much of their meaning may be read at a glance. The museum cultivates the powers of observation, and the casual visitor even makes discoveries for himself, and, under the guidance of the labels, forms his own impressions. In the library one studies the impressions of others.

The library is most useful to the educated; the museum to educated and uneducated alike, to the masses as well as to the few, and is a powerful stimulant to intellectual activity in either class.

The influence of the museum upon a community is not so deep as that of the library, but extends to a much larger number of people. The National Museum in Washington has 300,000 visitors a year, each of whom carries away a certain number of new thoughts.

The two ideas may be carried out, side by side, in the same building, and, if need be, under the same management, not only without antagonism, but with advantage. That the proximity of a good library is absolutely essential to the influence of a museum, will be admitted by every

one. I am confident, also, that a museum wisely organized and properly arranged is certain to benefit the library near which it stands in many ways, and more positively than through its power to stimulate interest in books, and thus to increase the general popularity of the library and to enlarge its endowment.

Many books and valuable ones would be required in this best kind of museum work, but it is not intended to enter into competition with the library. When necessary, volumes might be duplicated. It is very often the case, however, that books are more useful and safer in the museum than on the library shelves,—for in the museum they may be seen daily by thousands, while in the library their very existence is forgotten by all except their custodian.

Audubon's "Birds of North America" is a book which every one has heard of and which every one wants to see at least once in his lifetime. In a library, it probably is not examined by ten persons in a year. In a museum, if the volume were exposed to view in a glass case, a few of the most striking plates detached, framed, and hung upon the wall near at hand, it will teach a lesson to every passer-by.

The library may be called upon for aid by the museum in many directions. Pictures are often better than specimens to illustrate certain ideas. The races of man and their distribution can only be shown by pictures and maps. Atlases of ethnological portraits and maps are out of place in a library if there is a museum near by in which they can be displayed. They are not even members of the class described by Lamb as "books which are not books." They are not books, but museum specimens, masquerading in the dress of books.

In selecting courses for the development of a museum, it may be useful to consider what are the fields open to museum work. As a matter of convenience museums are commonly classed in two groups—those of science and those of art, and in Great Britain the great national system is mainly under the control of "The Science and Art Department of the Committee of Council on Education."

This classification is not entirely satisfactory, since it is based upon methods of arrangement, rather than upon the nature of the objects to be arranged, and since it leaves in a middle territory (only partially occupied by the English museum men of either department), a great mass of museum material, of the greatest moment, both in regard to its interest and its adaptability for purposes of public instruction.

On the one side stand the natural-history collections, undoubtedly best to be administered by the geologist, botanist, and zoölogist. On the other side are the fine-art collections, best to be arranged, from an æsthetic standpoint, by artists. Between is a territory which no English word can adequately describe—which the Germans call *Culturgeschichte*—the natural history of civilization, of man and his ideas and achievements. The museums of science and art have not yet learned how to partition this territory.

An exact classification of museums is not at present practicable, nor will it be until there has been some redistribution of the collections which they contain. It may be instructive, however, to pass in review the principal museums of the world, indicating briefly their chief characteristics.

Every great nation has its museum of natural history. The Natural History Department of the British Museum, recently removed from the heart of London to palatial quarters in South Kensington, is probably the most extensive,—with its three great divisions, Zoölogical, Botanical, and Geological.

The historian and the naturalist have met upon common ground in the field of anthropology. The anthropologist is, in most cases, historian as well as naturalist; while the historian of to-day is always in some degree an anthropologist, and makes use of many of the methods at one time peculiar to the natural sciences. The museum is no less essential to the study of anthropology than to that of natural history. The library formerly afforded to the historian all necessary opportunities for work. It would seem from the wording

of the new charter of the American Historical Association that its members consider a museum to be one of its legitimate agencies.

Your Secretary has invited me to say something about the possibilities of utilizing museum methods for the promotion of historical studies. This I do with much hesitation, and I hope that my remarks may be considered as suggestions rather than as expressions of definite opinion. The art of museum administration is still in its infancy, and no attempt has yet been made to apply it systematically to the development of a museum of history. Experiment is as yet the museum-administrator's only guide, and he often finds his most cherished plans thoroughly impracticable. That museums can ever be made as useful to history as they are to physical science, their most enthusiastic friend dares not hope. The two departments of science are too unlike.

The historian studies events and their causes; the naturalist studies objects and the forces by which their existence is determined. The naturalist may assemble in a museum objects from every quarter of the globe and from every period of the earth's history. Much of his work is devoted to the observation of finished structure, and for this purpose his specimens are at all times ready. When, however, he finds it necessary to study his subject in other aspects, he may have recourse to the physical, chemical, and physiological laboratories, the zoölogical and botanical gardens and aquaria, which should form a part of every perfect museum system. Here, almost at will, the phenomena of nature may be scrutinized and confirmed by repeated observation, while studies impracticable in the nursery may usually be made by members of its staff, who carry its appliances with them to the seashore or to distant lands.

The requirements of the historian are very different. Nevertheless I am confident that the museum may be made in his hands a most potent instrumentality for the promotion of historical studies. Its value is perhaps less fully realized than it would be were it not that so many of its

functions are performed by the library. In the library may be found descriptive catalogues of all the great museums, and books by the hundred copiously illustrated with pictures of the objects preserved in museums. A person trained to use books may by their aid reap the advantage of many museums without the necessity of a visit to one.

The exhibition series would be proportionately larger in an historical than in a natural-history museum. The study series of a historical museum would mostly be arranged in the form of a library, except in some special departments, such as numismatics, and when a library is near might be entirely dispensed with.

The adoption of museum methods would be of advantage to the historian in still another way, by encouraging the preservation of historical material not at present sought for by librarians, and by inducing present owners of such material to place it on exhibition in public museums.

Although there is not in existence a general museum of history arranged on the comprehensive plan adopted by natural-history museums, there are still many historical collections of limited scope, which are all that could be asked, and more.

The value to the historian of archæological collections, historic and pre-historic, has long been understood. The museums of London, Paris, Berlin, and Rome need no comment. In Cambridge, New York, and Washington are immense collections of the remains of man in America in the pre-Columbian period,—collections which are yearly growing in significance, as they are made the subject of investigation, and there is an immense amount of material of this kind in the hands of institutions and private collectors in all parts of the United States.

The museum at Naples shows, so far as a museum can, the history of Pompeii at one period. The museum of St. Germain, near Paris, exhibits the history of France in the time of the Gauls and of the Roman occupation. In Switzerland, especially at Neuchatel, the history of the inhabitants of the Lake Dwellings is shown.

American ethnological museums are preserving with care the memorials of the vanishing race of red men. The George Catlin Indian Gallery, which is installed in the room in which this Society is now meeting, is valuable beyond the possibility of appraisement, in that it is the sole record of the physical characters, the costumes, and the ceremonies of several tribes long extinct.

Other countries recently settled by Europeans are preserving the memorials of the aboriginal races, notably the colonies in Australia and New Zealand. Japan is striving to preserve in its government museum examples of the fast disappearing memorials of feudal days.

Ethnographic museums are especially numerous and fine in the northern part of Europe. They were proposed more than half a century ago, by the French geographer, Jomard, and the idea was first carried into effect about 1840, on the establishment of the Danish Ethnographical Museum, which long remained the best in Europe. Within the past twenty years there is an extraordinary activity in this direction.

In Germany, besides the chief museum in Berlin, considerable ethnographical collections have been founded in Hamburg and Munich. Austria has in Vienna two for ethnography, the Court Museum (Hof-Museum), and the Oriental (Orientalisches Museum). Holland has reorganized the National Ethnographical Museum (Ryks Ethnographisch Museum) in Leyden, and there are smaller collections in Amsterdam, Rotterdam, and The Hague. France has founded the Trocadero (Musée de Trocadero). In Italy there is the important Pre-historic and Ethnographic Museum (Museo preistorico ed ethnografico) in Rome, as well as the collection of the Propagando, and there are museums in Florence and Venice.

Ethnographical museums have also been founded in Christiania and Stockholm, the latter of which will include the rich material collection by Dr. Stolpe on the voyage of the frigate "Vanadis" around the world.

In England there is less attention to the subject,—the

Christy collection in the British Museum being the only one specially devoted to ethnography, unless we include also the local Blackmore Museum at Salisbury.

In the United States the principal establishment arranged on the ethnographic plan is the Peabody Museum of Archæology in Cambridge, and there are important smaller collections in the American Museum of Natural History in New York and the Peabody Academy of Sciences at Salem.

The ethnological collections in Washington are classified on a double system: in one of its features corresponding to that of the European; in the other like the famous Pitt-Rivers collection at Oxford, arranged to show the evolution of culture and civilization without regard to race. This broader plan admits much material excluded by the advocates of ethnographic museums, who devote their attention almost exclusively to the primitive or non-European peoples.

In close relation to the ethnographic museums are those which are devoted to some special field of human thought and interest. Most remarkable among these probably is the Musée Guimet, recently removed from Lyons to Paris, which is intended to illustrate the history of religious ceremonial among all races of men.

Other good examples of this class are some of those in Paris, such as the Musée de Marine, which shows not only the development of the merchant and naval marines of the country, but also, by trophies and other historical souvenirs, the history of the naval battles of the nation.

The Musée d' Artillerie does for war, but less thoroughly, what the Marine Museum does in its own department, and there are similar museums in other countries.

Historical museums are manifold in character, and of necessity local in interest. Some relate to the history of provinces or cities. One of the oldest and best of these is the Märkisch Provinzial Museum in Berlin. Many historical societies have collections of this character.

There are museums which illustrate the history of par-

ticular towns, events, and individuals. The museum of the city of Paris, in the Hôtel des Invalides, is one of these. The museum of the Hohenzollerns, in Berlin, contains interesting mementoes of the reigning family of Germany. The cathedrals of southern Europe, and St. Paul's, in London, are in some degrees national or civic museums. The Galileo Museum in Florence, the Shakespeare Museum at Stratford, are good examples of the museums devoted to the memory of representative men and the Monastery of St. Mark, in Florence, does as much as could be expected of any museum for the life of Savonarola. The Soane Museum in London, the Thorvaldsen Museum in Copenhagen, are similar in purpose and result, but they are rather biographical than historical. There are also others which illustrate the history of a race as the Bavarian National Museum in Nuremberg.

The study of civilization, or the history of culture and of the developments of the various arts and industries have brought into being special collections, which are exceedingly significant and useful. Dr. Klemm and Gen. Pitt-Rivers, in England, were pioneers in the founding of collections of this kind, and their work is permanently preserved in the Museum für Völkerkunde, in Leipzig and at the University of Oxford.

Nearly every museum which admits ethnological material is doing something in this direction. There are a number of beginnings of this sort in this very building.

The best of the art museums are historically arranged, and show admirably the development of the pictorial and plastic arts—some, like that in Venice, for a particular school; some that of a country, some that of different countries side by side.

The art museum, it need scarcely be said, contains, more than any other, the materials which I should like to see utilized in the historical museum.

Incidentally or by direct intention, a large collection of local paintings, such as those in Venice or Florence, brings vividly into mind the occurrences of many periods of his-

tory, not only historical topography, the architecture, the utensils, weapons, and other appurtenances of domestic, military, ecclesiastical, and governmental routine, but the men and women who made the history, the lowest as well as the most powerful, and the very performers of the deeds themselves, the faces bearing the impress of the passions by which they were moved.

These things are intelligible to those who are trained to observe them. To others they convey but half the lesson they might, or mayhap only a very small part indeed.

The historical museums now in existence contain, as a rule, chance accumulations, like too many natural-history museums of the present, like all in the past. I do not mean any disrespect by the word *chance*—but simply that, though the managers are willing to expend large sums for any specimens which please them, many most instructive ones have been excluded by some artificial limitation. The National Portrait Gallery in London is an instance. Many illustrious men are not represented upon its walls, solely because no contemporary pictures of theirs, reaching a certain ideal standard of merit, are in existence.

So, also, the collection of musical instruments at South Kensington, which admits no specimen which is devoid of artistic suggestions—thus barring out the rude and primitive forms which would give added interest to all. The naturalist's axiom, "any specimen is better than no specimen," should be borne in mind in the formation of historical museums, if not rigidly enforced.

Another source of weakness in all museums is one to which attention has already been directed, namely, that they have resigned, without a struggle, to the library material invaluable for the completion of their exhibition series. Pictures are quite as available for museum work as specimens, and it is unwise to leave so many finely illustrated books, lost to sight and memory, on the shelves of the libraries.

That libraries can do good work through the adoption of museum methods has been clearly shown in the British

Museum in the exceedingly instructive collections which have of late years been exhibited by its librarians, to illustrate such subjects as the lives of Luther and Michelangelo, and by their permanent display of pictures and documents referring to the history of London.

The Dyce-Forster collection of autograph documents, letters, and manuscripts is also, in its own way, suggestive. Every large library has done something of this kind in its own way. It remains for some student of history to work out upon a generous plan, and with plenty of exhibition space at his command, the resources which are already in the possession of some great treasure-house like the British Museum.

What the limitations of historical museums are to be it is impossible at present to predict. In museum administration experience is the only safe guide. In the scientific museum many things have been tried, and many things are known to be possible. In the historical museum most of this experimental administration still remains to be performed. The principal object of this communication is to call attention to the general direction in which experiment should be made.

The only safe course to be pursued in the development of plans in any untried department of museum work is to follow the advice which the Apostle Paul proffered to the Thessalonians:

"PROVE ALL THINGS; HOLD FAST THAT WHICH IS GOOD!"

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ACT OF INCORPORATION.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Andrew D. White, of Ithaca, in the State of New York; George Bancroft, of Washington, in the District of Columbia; Justin Winsor, of Cambridge, in the State of Massachusetts; William F. Poole, of Chicago, in the State of Illinois; Herbert B. Adams, of Baltimore, in the State of Maryland; Clarence W. Bowen, of Brooklyn, in the State of New York; their associates and successors, are hereby created in the District of Columbia a body corporate and politic, by the name of the American Historical Association, for the promotion of historical studies, the collection and preservation of historical manuscripts, and for kindred purposes in the interest of American history and of history in America. Said Association is authorized to hold real and personal estate in the District of Columbia so far only as may be necessary to its lawful ends to an amount not exceeding five hundred thousand dollars, to adopt a constitution, and to make by-laws not inconsistent with law. Said Association shall have its principal office at Washington, in the District of Columbia, and may hold its annual meetings in such places as the said incorporators shall determine. Said Association shall report annually to the Secretary of the Smithsonian Institution concerning its proceedings and the condition of historical study in America. Said Secretary shall communicate to Congress the whole of such reports, or such portions thereof as he shall see fit. The Regents of the Smithsonian Institution are authorized to permit said Association to deposit its collections, manuscripts, books, pamphlets, and other material for history in the Smithsonian Institution or in the National Museum at their discretion, upon such conditions and under such rules as they shall prescribe.

[Approved, January 4, 1889.]

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 ERRATA.

- PAGE 95, *Line 13*, Pinckney should be Pickering.
 " " *Note*, " " " "
 " 97, *Line 8*, Omit and after man.
 " 98, " 17, John I. Morse should be John T. Morse.
 " 207, " 9, 1796 should be 1776.
 " 208, *Last line*, 1783 should be 1785.
 " 221, *Line 2*, George S. Ellis should be George E. Ellis.
 " 247, " 10, *from bottom*, Postlesthwaite should be Postlethwaite.
 " 256, " 19, Relations should be Regulations.
 " 301, " 16, 1883 should be 1888.
 " 402, " 12, Quiberou should be Quiberon.
 " 437, " 4 *from bottom*, Auto de fé should be auto da fé.

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